

I V S R E G I U M:

Or, the Just, and Solid

FOUNDATIONS OF MONARCHY

In General, and more especially of the
MONARCHY of SCOTLAND:
Maintain'd against *Buchanan, Naph-*
thali, Dolman, Milton, &c.

BY

Sir GEORGE MACKENZIE,
His Majesties Advocat.

I Sam. 10. 26, 27.

*26. And there went with Saul a band of men,
whose hearts God had touched.*

*27. But the Children of Belial said, how shall
this man save us? and they despis'd him,
and brought him no presents, but he hold
his peace,*

E D I N B U R G H,

Printed by the Heir of Andrew Anderson, Printer to His most
Sacred Majesty, *June DOM 1684.*

The Design.

BUchannans Book *De Jure Regni* being lately Translated, and many Copies dispers'd. His Majesties Advocat, in Duty to the King, and Compassion to the People, who are thus like to be poison'd, has Written this Answer, which was necessary, notwithstanding of the Learn'd Answers made by *Barclay* and *Blackwood*, since beside that theirs are in Latin, and so not useful to the people, it is conceiv'd they understood not fully our Law, nor was our Law so clear then as now. Many Arguments have been invented since their time by *Dolman*, *Milton*, *Nephtaly*, &c. And Experience has open'd our Eyes much since their time. *Blackwoods* Arguments are Calculated for the Romish Church, and *Barclay* has mistaken essential Points. Theirs run upon History and Philology. This upon our Law, the Laws of Nations, Reason and Convenience. And I am afraid, it will be said that there are too many new thoughts in mine.

E R R A T A.

Page 90, For *Pliny* Read *Tacitus*.

TO THE
UNIVERSITIE
OF
OXFORD.

THe King my Master, and His Royal Brother, being by their natural goodness inclin'd to Pardon all Crimes, except Flattery; and by their Modesty to think all that Flattery, which can be justly said of them. I could not in prudence Dedicate this Book to Them, since the first Part of it, concerns the Right of the Monarchy: and the second the Right of the Successor. And therefore (since to Support a Crown, is the next Honour to the Bearing it) this Dedication was due to you, who have both in the last Rebellion, and this Factioned Age, maintain'd the Royal Interest, so learn'dly, and generously. Your late Decisions against the Fanaticks, have almost made my Reasonings useles; for your Authority will weigh as much as any privat mans Arguments. And what should have more credit amongst men, than an illustrious Company of Learn'd and pious Divines, deciding for their Duty, and Conscience against their Interest and Vanity. Men who wish for no Crown

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save in Heaven; and desire no power save over
their own Lusts and Passions. To the Episco-
pal Church, God hath fulfilled that promise, of
making Kings their Nursing Fathers, The true
Heirs and best Scholars of the Primitive Church,
happier than it, in this: that they can practise its
vertues, without its necessities, and need not
Poverty to make them humble, nor Armies to
make them Loyal. And who in it are so happy as
you, who can be submissive, without being Slaves,
Firm, without being Opiniatre. Zealous, without
being Cruel, and Pious, without being Bigot,
To whom I cannot wish greater blessings, than
that your Fame may grow as great as your Loy-
alty; That your Universitie may continue
prosperous, till an other grow more Learn'd;
and that all honest men, may be as ready to
serve you, as

Your sincere Welwisher,
and humble Servant,
Geo. Mackenzie.

THE
 Just Right
 OF
 MONARCHY

In General, but more especially of the
 KINGS of SCOTLAND; as,
 serted against *Buchanan* and
 others.

LUCIFER might in Reason have
 contented himself with that share
 of Knowledge, Glory, and Power,
 which was bestowed upon him, by
 his Almighty, and Bountiful Sovereign. And
Adam should have rested satisfied, with the
 Glory of having been made after the Image
 of God, and with the being his Lieute-
 nant in this lower World. But there are
 such strong Charms in Ambition, and
 Vanitie, that the one resolved to hazard
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all that he possessed, as being second, rather than not try if he could be the first, and the other, desiring to improve his present share, forefeited those Excellencies which he enjoyed. How jealous then should frail and fallen man be, in debates with those, whom the Almighty has appointed to be his Vicegerents amongst them; and to whom he has said, *Ye are Gods*. And how hard is it for us to Conquer that Vice, which the one could not resist, though he was all Light, and the other though he was all Innocence?

What Nations under Heaven were so happie as we, under the Reign of King *Charles the First*? Secure against all Invasion from abroad, by the situation of our Countrey; and from all Oppression at home, by its Laws, and the gracious Concessions of our excellent Monarchs: But more especially in that Age, by the innat Vertues of that King, who was severe to none, but to himself; and whose Prerogatives, no Laws could bound so much as His own Goodness did. And yet wearie with the burden of our own prosperity, we lusted after new improvements of Liberty and Property: And after we had emptied our own Veins, and Purses, in
fight.

fighting for these; all we gained, was to be Slaves, and Beggars. And having kill'd for Religion a King, who had more of it, than all who fought against him; we split our own Church into a thousand pieces, and from its murdered Body, did arise those Sectarians, like so many Worms, and Insects. But yet God Almighty desiring to try us once more, and make us for ever inexcusable, did not only deliver us from that Slavery that we had drawn upon our selves; but because we were all Crimes, he gave us a King who was all Clemencie, and who deserves to have been Elected, if he had not been born our King: And yet after that he had also condescended to all our new Extravagancies, and that by His Conduct, all Sciences flourish, and Trade is so increased, that Riches are become a Plague. We are now troubled with Jealousies, because we can be troubled with nothing else: And murmuring against the gentlest and best of Kings, we are tormented daily with Apparitions, Visions, Plots, Pamphlets and Libels. But under whom can we expect to be free from Arbitrary Government, when we were, and are afraid of it under King *Charles the First*, and King *Charles the Second*? And

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what King, or Government, can be secure from those, who Conspire the death of this most merciful Prince, and of this so ancient, and so well moulded Government?

Amongst the other wicked Instruments in these Rebellions, I must confess that our Countrey-men *Buchanan* (one of the chief Ornaments, and Reproaches of his native Countrey) the Authors of *Lex Rex*, *Naphtali*, and *Jus Populi Vindicatum*, have been Ring-leaders, who have endeavoured extreamly to poison this Nation by perswading the People:

1. That our Monarchs derive their Rights from them.

2. That therefore since they derive their Right from the People, they are accountable to them for for their Administration, and consequently they may be suspended or deposed by them.

3. That the People may Reform without them, and may rise in Arms against them, if the Monarch hinder them to Reform.

4. That the People or their Representatives may seclude the Lineal Successor, and raise to the Throne any of the Royal Family who doth best deserve the Royal Dignity.

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These being all matters of Right, the plain and easie way which I resolve to take for refuting them, so as the learned and unlearned may be equally convinced, shall be first, by giving a true account of what is our present positive Law. 2. By demonstrating that as our present positive Law is inconsistent with these Principles, so these our positive Laws are excellently well founded upon the very nature of Monarchy, and that those Principles are inconsistent with all Monarchy: And the third Class of my Arguments shall be from the Principles of common Reason, Equity and Government, abstracting both from the positiveness of our Law, and the nature of our Monarchy: And in the last place I shall answer the Arguments of those Authors.

As to the first, I conceive that a Treatise *De Jure Regni apud Scotos*, should have clear'd to us what was the power of Monarchs by Law, and particularly what was the positive Law of *Scotland* as to this point; for if these points be clear by our positive Law, there is no further place for debate, since it is absolutely necessary for Mankind, especially in matters of Government, that they at last acquiesce in something that is
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fix'd and certain, and therefore it is very well observed by Lawyers and States-men, that before Laws be made, men ought to reason ; but after they are made, they ought to obey : which makes me admire how *Buchanan* and the other Authors that I have named, should have adventur'd upon a Debate in Law, not being themselves Lawyers ; and should have written Books upon that Subject, without citing one Law, Civil, or Municipal, *pro* or *con* : Nor is their Veracity more to be esteemed than their Learning ; for it's undeniable that *Buchanan* wrote this Book *De Jure Regni*, to perswade *Scotland* to raise his Patron, though a Bastard to the Crown : and the Authors of *Lex Rex*, *Jus Populi Vindicatum*, and others, were known to have written those Libels from picque against the Government, because they justly suffered under it.

I know that to this it may be answered, That these Statutes are but late, and were not extant in *Buchanans* time, and consequently *Buchanan* cannot be Redargu'd by them.

2. That these Statutes have been obtain'd from Parliaments, by the too great influence of their Monarchs, and the too great
Pusillanimity

Puſillanimity of Parliaments, who could not reſign the Rights and Priviledges of the People, ſince they have no Warrant from them for that effect.

To the firſt of which, I answer, that my Task is not to form an Accuſation againſt *Buchanan*, but againſt his Principles, and to demonſtrate, that theſe Principles are not our Law, but are inconfiſtent with it, and it is ridiculous to think, that any ſuch Laws ſhould have been made, before theſe Treasonable Principles were once hatched and maintained, for Errors muſt appear before they be condemned: and by the ſame Argument it may be as well urged, that *Arius*, *Neforius*, &c. were not Hereticks; becauſe thoſe Acts of General Concils, which condemned their Hereties, were not extant, when they firſt defended thoſe opinions; and that our King had not the power of making Peace and War, till the Year 1661:

But, 2^{dly}, For clearing this Point, it is fit to know that our Parliaments never give Prerogatives to our Kings, but only declare what have been their Prerogatives, and particularly in theſe Statutes that I ſhall Cite, the Parliament doth not Confer any New Right upon the King, but only acknowledge

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knowledge what was Originally his Right and Prerogative from the beginning, and therefore the Parliament being the only Judges who could decide whether *Buchannans* Principles were solid, and what was *Jus Regni apud Scotos*. These Statutes having decided those points contraverted by him, there can be hereafter no place for Debate, and particularly as to *Buchannan*, his Book *De jure Regni apud Scotos*, it is expressly condemn'd as Slanderous, and containing several offensive Matters by the 134 *Act*, *Parl.* 8. *Ja.* 6. in *Anno* 1584. which was the first Parliament that ever sat after his Book was printed.

To the 2^d, I answer, that it being controverted what is the Kings Power, there can be no stronger Decision of that Controversie in Favours of the King than the acknowledgment of all Parties Interested, and it is strange and unsufferable to hear such as appeal to Parliaments, cry out against their Power, their Justice, and Decisions; and why should we oppress our Kings, and raise Civil Wars, whereby we endanger so much our selves to procure powers to Parliaments, if Parliaments be such ridiculous things as we cannot trust when they are empowered by us? and if there

there be any force in this answer of *Buchanans*, there can be none in any of our Laws; for that strikes at the Root of all our Laws; and as I have produced a Tract of reiterated Laws for many Years, so where were there ever such free unlimited Parliaments in any Nation as these whose Laws I have Cited? 2dly, Whatever might be said, if a positive Contract betwixt the King and People were produced, clearing what were the just Limits of the Monarchy, and bounding it by clear Articles mutually agreed upon, yet it is very absurd and extravagant to think that when the Debate is, what is the King of *Scotland's* just Power and Right, and from whom he Derives it, that the Laws and repeated Acknowledgements of the whole Representatives of the People assembled in the Supream Court of the Nation, having no open force upon it, but enacted at several times, in many several Parliaments, under the gentlest, peaceablest, and wisest Kings that ever they had, should not be better believed than the Testimonies of three or four byass'd and disoblig'd Pedants, who understood neither our Laws nor Statutes, and who can bring no clear fundamental Law; nor produce no Contract nor Paction restricting the

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the King, or bounding his Government. 3dly, That which adds a great deal of Authority to this Debate, and these Statutes is, that as this is clear by our positive Law, so it is necessarily inferred from the nature of our Monarchy, and is very advantageous for the Subjects of this Kingdom, which I shall clear in the second and third Arguments that I shall bring against these Treasonable Principles, nor can they be seconded by any solid Reason, as I shall make appear in answering the Arguments of those Authors.

I know that *Nephthaly*, the Author of *Jus populi*, and our late Fanatical Pamphlets alleadge that our Parliaments since 1661 are null and unlawful, because many who have Right to sit as Members, or to Elect Members were secluded by the Declaration or Test: But my answer is, *First*, That these were excluded by Acts of Parliament, which were past in Parliaments prior to their exclusion, and so they were excluded by Law, and no man can be said to be illegally excluded from his Seat in Parliament, who is excluded by a clear Statute. 2dly, If this were not a good answer, then the Papists might pretend that they are unjustly excluded, because they will

will not take the Oath of Supremacy, and because they are Papists; and how can the Fanaticks pretend to make this objection, since they by the same way excluded the Kings Loyal Subjects in the Year 1647. and 1649. &c. Or how would these Authors have rail'd at any Malignant for using this Argument against them, which they use now most impudently against us with far less justice, for their Parliaments were unjust upon other Heads, as being inconsistent with the fundamental Laws of the Kingdom, and so their acts of exclusion were null in themselves. 3^{dly}. All the Statutes made since 1661. are necessary consequences of former Laws, and so are rather renewed than new Laws. 4^{ly}. If this were allow'd there could be no end of controverfie, for all who are excluded would still alleadge that they were unjustly excluded, and consequently there could be no submission to Authority, and so no Society nor Peace.

The last answer that our Dissenters make when they are driven from all their other grounds is, that they, though the lesser, are yet the sounder part of the Nation; but this shift does not only overturn Monarchy, but establishes Anarchy, and
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though they were once settl'd in their be-
loved Commonwealth, this would be suf-
ficient to overturn it also, for every little
number of Dissenters, nay, and even the
meanest Dissenter himself might pretend
to be this sounder part of the Common-
wealth ; but God Almighty foreseeing that
pride or ignorance would suggest to frail
Mankind this principle, so inconsistent with
all that Order and Government, whereby
he was to preserve the World, he did
therefore in his great Wisdom convince men
by the Light of their own Reason, that in
matters of common concern, which were to
be determined by Debate, the greater num-
ber should determine the lesser ; and such
as drive beyond this Principle, shall never
find any certain Point at which they may
rest : and by the same Reason, the Law
has pronounc'd it safer to rest in what is de-
cided, though it be unjust, than to cast
loose the authority of Decisions, upon
which the peace and quiet of the Common-
wealth does depend, who would be so
humble and just, as to confess that his Ad-
versary has the juster side ? Or who
would obey if this were allow'd ? And
what Idea of Government or Society could

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a man form to himself, allowing once this principle.

It is also very observable, that those who pretend to be the founder part, and deny obedience upon that account, are still the most insolent and irregular of all the Society, the greatest admirers of themselves, and the greatest enemies to peace, and so the unfittest to be Judges of what is the founder part, though they were not themselves parties: But what pretence is there for that Plea in this case, where the foundations of our Monarchy, have been unanimously acknowledg'd by many different Parliaments, in many different Ages, chosen at first from the Dictats of Reason, and confirm'd after we had in many Rebellions, found how dangerous all those popular pretences are, and in which we agree with the Statismen, Lawers and Divines of all the well Govern'd Nations under Heaven, who are born under an hereditary Monarchy, as it is confess'd we are.

To return then to the first of those Points, I lay down as my first position, that our Monarchs derive not their Right from the People, but are absolute Monarchs, deriving their Royal Authority immediatly from God Almighty; and this I shall endeavour

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your to prove, first from our positive Law.

By the 2. *Act Par. 1. Ch. 2d.* in which it is declar'd; That His Majesty, His Heirs and Successors, have for ever, by vertue of that Royal Power which they hold from God Almighty over this Kingdom, the sole choice and appointment of Officers of State, Counsellors and Judges.

But because this Act did only assert that our Kings did hold their Royal Power from God, but did not exclude the people from being sharers in bestowing this Donative, therefore by the 5th Act of that same Parliament, they acknowledge the Obligation lying on them in Conscience, Honour and Gratitude, to own and assert the Royal Prerogatives of the Imperial Crown of this Kingdom, which the Kings Majesty holds from God Almighty alone; and therefore they acknowledge that the Kings Majesty only, by vertue of His Royal Prerogative, can make Peace and War, and Treaties with forraign Princes.

Because this last Statute did only assert that the King did hold His Imperial Crown from God alone, but did not decide from whom our Kings did only derive their Power; therefore by the 2d. *Act Par. 3d*
Ch.

Ch. 2d. It is declar'd that the Estates of Parliament considering that the Kings of this Realm, Deriving their Power from God Almighty alone; they do succeed Lineally thereto, &c. Which Statutes do in this agree with our old Law; for in the first Chapter of *Reg. Magist. vers. 3.* These Words are, That both in Peace and War, our Glorious King may so Govern this Kingdom committed to Him by God Almighty, in which He has no Superiour but God Almighty alone; which Books are acknowledg'd to be our Law, and are called the Kings Laws by the *54th Act Par. 3d Jam. 1.* and the *115. Act Par. 14. Jam. 3.*

These our Laws both Ancient and Modern, can neither be thought to be extorted by force, nor enacted by flattery, since in this we follow the Scripture, the Primitive Church and their Councils, the Civil Law and its Commentators, and the wisest Heathens, both Philosophers and Poets. As to the Scripture, God tells us, *That by him Kings reign, and that he hath anointed them Kings, and that the King is the Minister of God.* David tells us, *That God will give strength to his King, and deliverance to his King, and to his Anointed.*

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ed. Daniel sayes to Nebuchadnezzar, The
God of Heaven hath given thee a Kingdom.
And to Cyrus, God gave to Nebuchadnezzar
thy Father a Kingdom, and for the Ma-
jesty that he gave him, all Nations trem-
bled.

As to the Fathers, *Augustin de Civit.*
Dei, l. 5. c. 21. Let us not attribute unto
any other, the power of giving Kingdoms and
Empyrs, but to the true God. *Basil in Psal.*
32. The Lord setteth up Kings and remov-
eth them. *Tertul: apol: contra gentes*, Let
Kings know, that from God only they have
their Empyre, and in whose power only they
are. And *Irenaus* having prov'd this point
fully, ends thus, l. 5. c. 24. By whose Com-
mand they are born men, by his likewise they
are ordain'd Kings. This is also acknow-
ledg'd by the Councils of *Toledo* 6. c. 14
of *Paris* 6. c. 5. *vid Council aquis gran.* 3.
c. 1.

Amongst our late Divines, *Marca* the fa-
mous Arch-bishop of *Paris*, *Concord: sa-*
cerd: & imperij, l. 2. c. 2. n: 2. asserts,
That the Royal Power is not only bestowed by
God, but that it is immediatly bestow'd by
God upon Kings: and Refutes *Bellarmin.* *de*
laico c. 6. maintaining, That the Je-
suits Doctrine in this, lessens Authority, and
raises

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raises Factions, and contradicts both the Design and Word of God. *Duvalius de suprem. potest. Rom. Pontif. p. 1. q. 2.* Asserts that Kings derive their Rights by the Laws of God and Nature, *non ab ipsa Republica & hominibus*; and in all this the Fanaticks and Republicans agree with the Jesuits against Monarchy.

In the Civil Law this is expressly asserted, *Cod. de vet. Cod. enucleand. Deo auctore nostrum gubernante imperium quod nobis a cælesti majestate traditum est*, Nov. 6. in init. Nov. 133. in proem. in Nov. 80. 85, 86. *Justinian* acknowledges his Obligation to care for his People, because he received the Charge of them from God; and certainly Subjects are happier, if their Kings acknowledge this, as a duty to God; than if they only think it a Charge confer'd on them by their People, and that they are therefore answerable to them.

That the Doctors and Commentators are of this opinion, is too clear to need Citations, *vid. Arnis. cap. de Essentia Majest: Grauswinkel. de jur. Maj. cap. 1. & 2.*

As to the Heathens, *Hesiod. in Theog. verse 96.* says *ex deo sunt homines* Kings are from God. *Flomer* says their Honour is from

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God

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God *την δειξαι διος* ----- *Iliad. i. verse 197.*
Themistocles asserts, that the Regal Power
 came from God, *Orat. 5.* with whom a-
 grees *Dion. Chrysostom Orat. 1. diotog. a-*
pud Stob. serm. &c. Plat. in polit. &c.
 But above all, *Aristotle in polit. ε αρχην*
εχων αναταξεν ε δει αντιπαρασταναι. And *Plutarcho*
Agis & Cleom. ε θεμιτον εδε νεμομενον βασιλεως τας
χειρας προσφερειν.

If to these Statutes and Citations it be
 answered, that God Almighty may indeed
 be the principal and chief Author of Mo-
 narchy, and that Monarchs may derive
 their Power from him, as from the Su-
 pream Being, that directs all more im-
 mediat Causes, and yet the People may
 be the immediat Electors of Monarchs,
 and so Kings may derive immediatly from
 them their Power; and thus these Statutes
 are not inconsistent with the principle laid
 down by *Buchanan* and others, whereby
 they assert, that Kings in general, and par-
 ticularly the Kings of *Scotland*, derive
 their Power immediatly from the People.

To this my answers are, that first, if
 we consider the proprieties of the Words,
 there can be nothing more inconsistent,
 than that Kings should derive their Power
 from God Almighty alone, and yet that
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they should derive it from the People, for the Word *Alone*, is of all other words the most *exclusive*. 2^{dly}, The design of the Parliament in that acknowledgement was to condemn, after a long Rebellion, the unhappie Principles which had kindled it; and amongst which, one of the chief was, that our Kings derived their Power from the People, and therefore they might qualifie, or resume what they at first gave, or might oppose all Streaches in the Power they had given, and might even punish, or depose the King when he transgressed, none of which Principles could have been sufficiently condemned, by acknowledging that, though God was the chief Author, yet the People were the immediat Electors. 3^{dly}, There needed no Act of Parliament be made for acknowledging God to be the chief Author, and first Fountain of every Power, for that was never contraverted amongst Christians. 4^{thly}, That foolish glosse cannot at all consist with the Inferences deduced from that Principle in the former Statutes: for in the 2. Act, Par. 1. Char. 2. It is inferr'd from His Majesties holding His Royal Power from God alone, that therefore he hath the sole choice of his own Of-

ficers of State, Privy Counsellors, and
 Judges; And in the 5. *Añ*, it is inferr'd
 from the same Principle, that because he
 derives his Power from God alone, that
 therefore it is Treason to rise in Arms
 without his Consent, upon any pretext
 whatsoever: And in the 2. *Añ*, *Par. 3.*
Char. 2. It is concluded, that because
 our Kings derive their Power from God
 Almighty alone, therefore it is Treason in
 the People to interrupt, or divert their
 Succession, upon any Difference in Reli-
 gion, or other pretext whatsoever; whereas
 all this had been false, and inept Rea-
 soning, if the design of the Parliament had
 not been to acknowledge that our Kings
 derived not their Power from the People,
 for though they derived their Power from
 God, as the supream Being only, and
 not as the immediat bestower, and if the
 People were the immediat bestowers of that
 Power, then the People might still have
 pretended, that they who gave the Power,
 might have risen in their own Defence,
 when they saw the same abused, and might
 have diverted the Succession, when it de-
 scended upon a person who was an enemy
 to their Interest: but how false this glosse
 is, will appear more fully from the fol-
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lowing Arguments, and it is absolutely inconsistent with St. *Augustine's* opinion, formerly cited, wherein he forbids to attribute the giving of Kingdoms to any other but to God.

My second Argument for proving that Kings derive their Power from God alone, and not from the People, shall be from the principles of Reason. For *First*, The Almightyes design being to manifest his Glory, in Creating a World, so vast and regular as this is, and his goodnesse in Governing it, and that Men might live peaceably in it, having both Reason and Time to Serve him, it was consequential that he should have reserved to himself the immediat dependence of the supream Power, to preclude the extravagant and restless multitude, from those frequent Revolutions which they would make, and Desolations which they would occasion, if they thought that the supream Power depended on them, and that they were not bound to obey them for Conscience sake; so that those expressions in Scripture were very useful in this to curb our Insolencies, and to fix our restlesnesse; and it seems that Kings are in Scripture, said to be gods, to the end it might be clear

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clear that they were not made by Men.
2dly, God Almighty being King of Kings,
it was just, that as inferiour Magistrats
derived their Power from the King, so
Kings should derive their Power from God,
who is their King; and this seems to be
clear from that analogy, which runs in a
Dependence, and Chain through the whole
Creation. 3dly, As this is most suitable
to the principles of Reason, so it is most
consonant the analogy of Law, by which
it is declar'd, that no Man is master of
his own Life, or Limbs, *nemo est Dominus*
membrorum suorum; and therefore, as no
Man can lawfully take away his own Life,
so neither can he transfer the power of dis-
posing upon it to any other Man, and
consequently this Power is not derived to
Kings and Princes by privat Men, but is
bestowed upon them by God Almighty,
who is the sole Arbiter of Life and Death,
and who can only take it away, because
he gave it: And if it be objected, that
this last branch of the Argument, seems
either to prove nothing, or else to prove
that there can be no Elective Monarchies.
To this it is answered, that even in E-
lective Monarchies, the Nomination pro-
ceeds only from the People, but the Roy-
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al Power from God, as we see in inferior Magistracies, such as Burrows Royal, &c. the People Elect, and so the Nomination is from them, but the power of Governing proceeds from the King, and not from the Electors, and therefore as the People who Elected the Magistrats in these Towns, cannot Depose them by their own Authority, so neither can the People Depose their King, but the punishment of him belongs to God Almighty. I confesse, that if the People Choose a King with expresse Condition, that they may punish him as the Lacedemonian Kings were punishable by those Magistrats, call'd the Ephori, the Kings are in that case accountable to the People, but then they are not Monarchs, having supream Power as our Kings have, and who are therefore declar'd to hold their Power immediatly from God, and not to be at all punishable by the People.

The 4th Argument that I shall use, for proving that our Kings derive not their power from the People, shall be from the natural Origin of Monarchie, and of ours in particular, which I conceive to be that Right of Paternal Power which is stated in them; for understanding where-
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of, it is fit to know, that God at first created only one Man, that so his Children might be subject to him, as all Children yet are to their Parents: and therefore the Jesuitical and Fanatical Principles, that every man is born Free, and at Liberty to choose what form of Government he pleaseth, was ever, and is most false, for every man is born a Subject to his own Parents, who, if they were not likewise subject to a Superiour Power, might judge and punish them Capitally, lead them out to War, and do all other things that a King could do, as we see the Patriarches did in their own Families. And as long as it is known who is the Root of the Family, or who represents it, there is no place for Election, and people Elect only when the memory of this is lost, and such as overcome the Heads of Families in Battle, succeed to them in their Paternal Right.

If it be answered, that the Father may by nature pretend to a power over his Children, or it may be an Elder Brother over his Cadets, yet there is no tie in nature subjecting Collaterals, as Uncles, and their descendents to those descended from the Eldest Familie. To this I reply, that 1. This power over all the Family
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was justly given by nature, to shun divisions, for else every little Family should have erected it self in a distinct Government, and the weakest had still been a Prey. 2. We see that *Abraham* did lead out to War, and in every thing Act as King, not only over his own Children, but all the Family, and whole Nations, are call'd the Children of *Israel*, the Children of *Edom*, &c. 3. That must be concluded to be establish'd by natural instinct; which all men in all Ages and Places allow and follow; but so it is, that all Nations in all Places, and Times have ever allow'd the Eldest Son of the Eldest Family to govern all descended from the Stock, without new Elections; and the Author of the late famous *Moral Essayes* have admir'd this as one of the wisest Maxims that we have from Natural Instinct; for if the wisest, or strongest were to be choos'd, there had still been many Rivals and so much Faction and Discord, but it is still certain who is the Eldest Son, and this precludes all Debate, and prevents all Dissention: For applying this to our Case, it is fit to know, that if we believe not our Historians, then none else can prove that the People of *Scotland* did at first Elect a King, that being contrarie to the acknowledgements

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ledgements of our own Statutes; and all *Buchannans* Arguments, for restricting Kings, being founded upon the authority of our Historians, who, (as he sayes,) assert that *K. Fergus* was first Elected King by the People, if he be not able to prove that our Kings owe their Crowns to the Election of the People, without any inherent or previous Right, all his Arguments vanish to nothing, but on the other hand, if we consider exactly our Historians, we will find that our Kings Reign over us by this Paternal Power; and though I am not very fond of Fabulous Antiquities, yet if Tradition, or Histories can be believ'd in any thing, they should at least be believ'd against *Buchanan*, and those who make use of them, to restrict the power of our Kings, and by our Histories it is clear, that *Gathelus* having led some Forces into *Egypt*, he after several Victories, sett'd in *Portugal*, call'd from him *Portus Gatheli*, from which an Collonie of that Race transported it self into *Ireland*, and another into *Scotland*; nor should this be accounted a Fable, since *Cornelius Tacitus*, in the Life of *Agricola*, makes the *Scots* to be of *Spanish*, and the *Picts* to be of *German* Extraction.

The *Scottish* Collonies finding them-
selves

selves oppress'd by the *Brittains*, and *Picts*,
 they sent over into *Ireland* to *Ferquhard*,
 and he sent them a considerable Supplie,
 under the Command of *Fergus* his Son,
 who having secur'd them against their
 Enemies, all the Heads of the Tribes ac-
 knowledged him for their King, and
 swore that they should never admit of any
 other Form of Government then Mo-
 narchie; and that they should never obey
 any except Him and his Posterity, which
 if they brake, they wish'd that all the
 Plagues and Miseries that had formerly
 fallen on their Predecessors, might again
 fall upon their Posterity, as the punish-
 ment of that Perjury. All which Religious
 Vows and Promises, Seal'd by those dread-
 ful Oaths voluntarily given, were graven
 on Marble Tables, and Consign'd for pre-
 servation into the custody of their Priests:
 and these are *Boetius* own words, *Fol.* 10.
 From which I observe, 1. That as our
 Laws assert, that our Kings derive their
 Power from God, and not from the People,
 so we ought not to believe the contrary
 upon the Faith of our Historians, except
 they were very clear, and unanimous in
 contradicting our Laws, whereas it ap-
 pears to me, that our Laws agree with
 our Historie, for *Gathelus* was not at all
 Elected

Elected by the People, but was himself
 the Son of a King, and did Conquer by his
 own Subjects, and Servants, and all those
 who are descended from his Collonies, were
 by Law oblidg'd to obey the Eldest
 Son, and Representative of that Royal Fa-
 mily. And *Ferquhard* is acknowledg'd
 to have been his only Successor, nor did
 ever any of the *Scottish* Tribes pretend to
 the Supremacie, and our Histories bear,
 that none of our Tribes would yield to
 another; and the Fatal Marble Chair that
 came from *Spain*, remaining with these
 who went to *Ireland*, does evince that the
 Birth-right remain'd with them; and there-
 fore When *Fergus* the Son of *Ferquhard*
 came over, he brought over with him
 the Marble Chair, which was the mark of
 Empire. And *Boetius* immediatly upon his
 arrival calls him King, and *Foridon* the most
 Ancient of our Historians, lib. i. cap. 36.
 calls him, *Fergusus Filius Ferardi aut*
Ferquhardi ex antiquarum Regum prosapia
genitus, qui ambitione Regnandi stimulatus
magnam sibi Juvenum copiam assimulavit
& Albionem continuo progressus est & ibidem
super eos Regem primum se constituit, that is
 to say, he made himself the first King,
 therefore K. James. *Basil. Doron*, pag.

201. asserts, that *K. Fergus* made himself King and Lord as well of the whole Lands, as of the whole Inhabitants. 2. We read nothing at all of the consent of the People, but of the Heads of the Tribes, who had no Commission from the People, each of them having by his Birth-right a Power to Command his own Tribe, and consequently, the Royal Power was not derived to *Fergus* from the People, but had it's Original from this Birth-right that was both in them, and *Fergus*, and he succeeded in the Right of those Chiefs to Command their respective Families; and *Boetius* brings in King *Fergus*, lib. 1. num. 5. Speaking of himself, as a pious Parent, as one who owes to them what a Parent owes to his Children: *sunt pij Parentes in Liberos propensi, & debemus vobis quod proli genitores*. And the consent given by the Chief of the Clanns, and the People did not give, but declare the former Right, as our consent now does in Acts concerning the Prerogative, and as the Vote of the Inquest does in the Service of Heirs; and thus at the Coronation of our Kings, it is still said by our Historians, that such a man was declared King, *communi suffragio & acclamatione*. 3. This
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consent being only given in the Armie cannot be said to have been universally by the People, nor do we read that the People did Commissionat the Armie, or that the Armie consulted the People; and in general it cannot be instanc'd, that the People did in any Nation universally consent to Election, nor is it possible all the People can meet. And in *Pole*, which is the only Elective Monarchie we know, the Free-holders only consent, and yet every privat Man and Woman have as great interest, according to these pretend- ed Laws of Nature, as they have: & *potius est conditio negantis*. Nor do we find that the Commons, and mean People have any interest in the Elections, of our Magi- strats, or Parliament Men; so that Popular freedom by Birth, and the interest of the People, in Popular Elections are but meer Cheats invented to engage the Rabble, in an aversion to the establish'd Government, when factious and insolent Spirits, who cannot submit themselves to Government, design to cheat the Multitude by fair Pre- tences, and to bribe them by Flatterie.

If it be pretended, that it is not cer- tain, whether King *Fergus* was eldest Son to *Fergusbarad*, nor is it probable, that if he had been such, he would have preferr'd

an uncertain Conquest in *Scotland*, to his secure Succession in *Ireland*. To this it is answered, that all our Histories bear, that King *Fergus* sent his Son *Fergus*, and when a Son is spoken of indefinitely, in such Cases, he is actually understood to be the Eldest. 2. He brought with him the Marble Chair, the mark of Empire, which would not have been allow'd to a Cadet. 3. It is said, that having settled the affairs of *Scotland*, he returned into *Ireland* to settle the differences there about the choosing of a new King, which does import that he should have been King, if he had not prefer'd *Scotland* to *Ireland*, and the reason of this preference was, because *Ireland* was then divided amongst many Kings, and his Predecessors had but a very small share of it at that time, and *Scotland* being a part of a greater Isle, he probably found in this greater Isle, a higher flight for his Hopes, and more latitude for his Ambition.

But albeit the Kings of *Scotland* had been originally and at first elected by the People, yet it does not at all follow necessarily as *Buchanan*, *Dolman*, and our other Republicans pretend, that therefore they may reject them at their pleasure, or which

is all one, when they imagine that the Kings Elected by them serve not the ends for which they were designed, and that for these Reasons. 1. It cannot be deny'd, but that the People may consent to an Election of a Monarch without Limitation; for from the Principles of Nature, we may learn, that whatever is in ones power may be by them transfer'd upon another; and therefore, if the People be indew'd with a power of governing themselves, they may certainly transfer this Power upon another; and we see that all Christians, and even our Republicans allow, that men may sell themselves to be Slaves, a custome not only mention'd but approv'd by God himself, so far does consent reach beyond what is necessary for maintaining this Point. 2. If this could not be, then there could be no such thing as absolute Monarchies, which is against the receiv'd Opinion of all Nations, and against the Doctrine of all Authors, who, though they debate that this, or that Monarchie, in a particular Countrey is not Absolute, yet it was never contraverted by any man alive, but that the People might consent, and in many places have consented to absolute Monarchies, and by the famous *Lex Regia*

Regia, amongst the Romans, *Populus ei & in eum omne Imperium suum, & Potestatem transtulit, instit. de jur. nat. gent. & civ. § 6.* Mention'd likewise by that Famous Lawyer *Ulpian, l. 1. ff. de constitut. Princ.*

3. We see this consequence to be very false in many other cases, and therefore it cannot be necessary here, for we find that a man chooses a Wife, yet it is not in his power to put her away; Cardinals choose the Pope, and Chapters the Bishop; and yet they cannot depose them; the Common Council choose Magistrates, and yet they cannot lay them aside.

4. This Reasoning is condemn'd as most fallacious, by most learn'd, and disinterested Lawyers, and therefore it cannot be infallible, as is pretended: *vide Arnisaum cap. 3. num. 2. Hañon. dis. Pol. 9. num. 44. Panorm. ad cap. 4. de Clér. non residend. Zasius ad l. non ambigitur num. 3. ff. de legibus*, Nor have any Lawyers differ'd from this common opinion of mankind, except some very few, who have differ'd from a Principle of Pique, rather than of Judgement.

The next thing that I am to prove in this my first Proposition, is, that Our
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King is an Absolute Monarch, and has the Supream Power within this his Kingdome, and this I shall endeavour to prove, *First*, From our positive Law, 2. By several Reasons deduc'd from our Fundamental Laws and Customs. 3. From the very nature of Monarchy it self, and the Opinion of Lawyrs who write upon that Subject, and who define Absolute Monarchie to be a Power that is not limited or restricted by coactive Law, *Arnisæus, de essentia Majest. cap. 3. num. 4.*

By the 25. *Act Parl. 15. Ja. 6.* The Parliament does acknowledge, *that it cannot be deny'd, but his Majesty is a free Prince, of a Sovereign Power, having as great Liberties, and Prerogatives, by the Laws of this Realm, and Priviledge of his Crown, and Diadem, as any other King, Prince, or Potentat whatsoever.* And by the 2. *Act Parl. 18. Ja. 6.* The Parliament consenting to his Majesties restoring of Bishops, declare and acknowledge the absoluteness of our Monarchy, in these words. *The remed whereof properly belongs to his Majesty, whom the whole Estates, of their bound n duty, with most hearty and faithful affection, humbly and truly acknowledge to be a sovereign Monarch, absolute*

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*late Prince, Judge and Governour, over all
Persons, Estates and Causes, both Spiritu-
al and Temporal, within his said Re-
alm.*

And by the first Act of that same Par-
liament. *The Estates and whole Body of
this present Parliament, acknowledge all with
one voluntar, humble, faithful, united heart,
mind, and consent his Majesties sovereign
Authority, Princely Power, Royal Preroga-
tive, and privilege of his Crown, over all
Persons, Estates, and Causes whatsoever, with-
in his said Kingdom.*

And because no Acts were ever made,
giving Prerogatives, nor even declaring
Prerogatives to have been due, until some
special controversie did require the same, so
that Possession, and not positive Law, was the
true measure of the Prerogative; there-
fore the Parliament doth in that same Act
approve, and perpetually confirm all the
Royal Prerogatives, as absolutely, amply,
and freely in all respects, and considera-
tions, as ever his Majesty, or any of his
Royal Predecessors possessed, used, and
exercised the same; and they promise that
his Majesties Imperial Power, which
God has so enlarg'd, shall never be in
any sort impar'd, prejudg'd, or diminish-
ed,

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ed, but rather reverenc'd, and augment-
ed as far as possibly they can.

In the preface to our Books of Law, call'd *Regiam Majestatem*, it is acknowledg'd that the King has no Superiour, except the Creator of Heaven and Earth, who Governs all. Forreign Lawy^{rs} also, such as *Lansius de Lege Regia*, num. 49. and others do number the King of *Scotland* amongst the absolute Monarchs.

My second Argument for proving our King to be an absolute Monarch, shall be from my former position, wherein I hope I have prov'd sufficiently, that our Kings derive not their Right from the People; for if the King derive not his Power from the People, the Monarchy can never be limited by them, and consequently it must be an absolute Monarchy; for there could be nothing more unjust, more unnatural, and more insolent, then that the People should pretend a Right to limit and restrict that Power which they never gave; and the only reason why *Buchannan*, and his Complices, do assert our Monarchy to be a qualified and limited Monarchy, being that the People, when they first Elected our Kings, did qualifie and restrict their Govern.

Government. This position being false as appears by the absolute Oath, and original Constitution above set down, which is lessened, or qualified by no condition whatsoever, therefore the conclusion drawn from it must be false likewise.

The third Argument shall be deduced from the Nature of Monarchy, and in order thereto, I lay down as an uncontroverted principle, that every thing must be constructed to be perfect in its own Nature, and no mixture is presum'd to be in any thing ; but he who alledges, that the thing controverted is added against Nature, must prove the same ; and therefore since Monarchy is that Government whereby a King is Supream, the Monarch must be presum'd , neither to be oblig'd to Govern by the advice of the Nobility, (for that were to confound Monarchy with *Aristocracie*) nor by the advice of the People (for that were to confound it with *Democracie*) and consequently if *Buchanan*, and others design to prove, that our Kings are obliged to Govern, by the advice either of the Nobility , or People, or are subject to be Chastised by them, they must prove, that our Kings, at their first Creation, were Elected upon these Conditions,

ditions, the very Essence and Being of Monarchy, consisting in its having a Supreme, and absolute Power. *Arniseus c. 30. Vasquez l. 1. Contrav. c. 47. Budæus in l. princeps. Zas. ibid. ff. de legibus, pone enim,* says *Arniseus, populum in Regem habere æqualem potestatem neutrum pro summo venditari posse.* When we hear of a Monarch, the first notion we have is, that he is subject to none; for to be a Subject and a Monarch, are inconsistent; but if we hear that his Nobility, or People, or both may Depose, or punish him, we necessarily conclude by the Light of Nature, that they, and not He, are the supreme Governours. Thus we see, that in allowing our King to be an absolute Monarch, we have only allow'd him to be a Monarch, and to have what naturally belongs to him, and that by as necessary a consequence; for as every Man is presumed to be reasonable, because reason is the Essence of Man, so is a King presum'd to be absolute, except these limitations whereby the Monarchy is restricted, could be prov'd by an expresse Contract.

4thly, How is it imaginable, but that if our Predecessors had Elected our Kings upon any such Conditions, but they would have been

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been very careful to have limited the Monarchy, and this Contract had with these conditions been recorded, whereas on the contrary we find, that albeit great care was taken to record the Oath of Allegiance made to the King, and to grave the same upon Marble Tables, consign'd unto the custody of their Priests, as sacred Oracles; yet none of all our Historians make the least mention of any limitations in these Oaths, or by any other Contract; and to this day our Oaths of Supremacy, and Allegiance, are clogged and lessened by no limitations.

If it be answered, that these limitations do arise from the nature of the thing it self, there being nothing more unreasonable, and contrary to the nature of Government, then that a Monarch, who was design'd to be a Protector to his People, should be allow'd to destroy them. To this it is answered, that Monarchy by its nature is absolute, as has been prov'd, and consequently these pretended limitations are against the nature of Monarchy, and so arise not. *ex natura rei*, nor can there any thing be more extravagant, than to assert that, that which is contrare to the nature of Monarchy, should arise from
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its nature, and it might be with greater reason pretended, that because the great design of men in Marriage, is to get a **Helper**, that therefore they may repudiate their Wives, when they find them unsupportable, and that the putting them away in such cases, is consistent enough with the nature of their Oath, though simple, and absolute; this cause of Divorce arising from the nature of Marriage it self: This is after Vowes to make Inquiry, and what Vow, or Oath could be useful, if the giver were to be Judge how far he were ty'd, and if his conveniency were the measure of his Obligation. But since I shall hereafter fully prove, that these limitations are as dangerous to the Subjects, as to the Prince, and that ten thousand times more Murders, and other Insolencies have been committed in Civil Wars, upon the false pretence of Liberty, than ever was committed by the worst of Kings; it must necessarily follow, that those limitations ought not to be admitted after an absolute Oath, for eviting inconveniencies, which at the ballance appear to be of no weight.

5. It cannot be denied, but our Kings have ever had the power of Peace and War, the calling and dissolving of Parliaments,

ments; and a negative Voice in them, the remitting of Crimes, and nomination of Judges; and therefore it must be presumed, that since the Law has not limited them in those things, it has limited them in nothing; for by involving us in War, they may expose our Fortunes, our Wives and Children to the greatest of dangers; and it had been great folly to limit them in any thing, after those great Prerogatives were allowed: And though our Histories do bear, That Peace and War were ordinarily determined by the advice, and consent of the Nobility, yet that does no more infer a necessity not to do otherways, than the ordinary stile of all our Proclamations, bearing to be with advice of our Privy Council, infers a necessity upon the King to do nothing without their advice; and how could the consent of the Nobility have been necessary in the former Ages, since all their Right flowed from the King Himself, and that neither they then, nor the Parliament now, had, or have a Power equal with the King, much less above Him, as shall be fully proved in the first Conclusion, that I am to draw from this Doctrine; only to what I have said, I must here add, that

it being propos'd to our Predecessors, at the swearing the Oath of Allegiance to King *Ergus*, whether they would be govern'd by a King, who should have absolute Power, or by the Nobility, or by a Multitude: it was answer'd, that lest they should have many Kings in place of one, they abhorr'd to bestow the the Absolute Power either upon the Nobility, or upon the Multitude.

6. I cannot but exceedingly commend our Predecessors, for making this reasonable choice of an absolute Monarchy, for a Monarch that is subject to the impetuous caprices of the Multitude when giddie, or to the incorrigible Factionousness of Nobility when interested, is in effect no Government at all; and though a mixt Monarchy may seem a plausible thing to Metaphysical Spirits and School-men, yet to such as understand Government, and the World, it cannot but appear impracticable; for if the People understand that it is in their Power to check their Monarch, the desire of command is so bewitching a thing, that probably they will be at it upon all occasions; and so when the King commands one thing, the Nobility will command another, and it may be the People

People a third. And as it implyes a contradiction, that the same Persons should both command and obey : so where find we those sober and mortified men, who will obey, when they may command. Let us consider what dreadful extravagancies, and cruelties appear'd at *Rome*, betwixt the Tribunes of the People, and the Senat, one of six Kings had a Son, who ravish'd a Woman, and thereupon the Kings were expell'd, but every year almost produced a Civil War, wherein vast numbers of free *Romans* were murther'd, and in the contest betwixt *Sylla* and *Marius*, 90. Senators, 15. Consuls, 2600. Gentlemen, and 100000. others were murther'd, and after the whole Common-wealth was exhausted in the Wars betwixt *Cesar* and *Pompey*; and in the immediat succeeding War betwixt *Augustus*, *Anthony*, and *Lepidus*, wherein every man lost either a Brother, a Father, or a Son, *Rome* return'd again to its Monarchy, and was never so happy, as under *Augustus*. The People of *Naples* complaining lately of their Taxes, put themselves under the Command of Reforming *Massaniello*, by whose extravagancies they suffer'd more in one Month, than they had done under the *Spain-*

sh cruelty in an hundred years. But our
 late Reformation in *Brittain* seems to have
 been permitted by God, to let us see
 that mix'd Governments having power to
 Reform Kings, are more insufferable than
 Tyranny; for by it we saw that the mul-
 titude consists of Knaves and Fools, and
 both these are the worst of Governors,
 that the best of Kings will be thought wick-
 ed, when Subjects are his Judges, who
 resolve not to obey, and that it is impos-
 sible to know what is right, when every
 man is Judge of what is wrong. The im-
 practicableness likewise of this popular Su-
 premacy, will yet more convincingly ap-
 pear, if we consider that the People are
 to be Judges, because of their natural free-
 dom, for then all men should have equal
 right to be Reformers, and these can never
 meet nor consult together: And if it be
 answered, that the People may send their
 Representatives, my Reply is, that the great-
 est half of the Nation are neither Free-
 holders nor Burgesses, and yet those only are
 call'd the Representatives of the people; and
 what absurd Tricks and Cheats are us'd in
 choosing even those Representatives, and
 it may be the resolution prevails by the
 Vote of the greatest Fool or Knave in the
 Meet-

Meeting; and if any one man remove by sickness or accident, at the passing of a Vote; or if any of the multitude be bryb'd or have prejudice, though on a most unjust account, that which would have been the interest of the Nation, turns to be against it, so infallible a Judge is the multitude. And I have seen in popular Elections, hundreds cry for a thing, and thereafter ask what was the matter.

7ly, If the the *Proceres Regni*, or Nobility are to be the check upon our Kings, and to be trusted with this coercive power of calling them to an account, as *Buchanan* pretends; then I desire to know who invested them with this power, for it was never pretended that it is naturally inherent in them: And if the people invested them, I desire to know by what *Act* the people transferr'd this power upon them, for they have no Law, nor original Constitution for this, as our Kings have for their Right; and passing over the dangers may arise from their having this power, because of the Factionfness, Poverty, Picques, Humors, or Ignorance that may be incident to them, it seems to me strange, why we the people should trust such to be our Checks over the King, who are His own

own Creatures, owing their Honours to Him, and expecting dayly from Him Employments and Estates? and if they and the people differ, who is to be Judges of those Controversies? Nor can the Nobility and Commons assembled in Parliament have this coercive power, for the Reasons which I shall hereafter offer; and therefore none has it, but the King is Supream in himself, and accountable to none, save God Almighty alone. But more of this will be found in the Sequel of this Discourse, upon other occasions.

8/y, Whatever proves Monarchy to be an excellent Government, does by the same Reason prove absolute Monarchy to be the best Government; for if Monarchy be to be commended, because it prevents Divisions, then a limited Monarchy, which allows the people a share, is not to be commended, because it occasions them; if Monarchy be commended, because there is more expedition, secrecie, and other excellent Qualities to be found in it, then absolute Monarchy is to be commended above a limited one; because a limited Monarch must impart his secrets to the people, and must delay the noblest designs until malicious and factious Spirits be either gain'd or
over

overcome : And the same analogy of Reason will hold in reflecting upon all other advantages of Monarchy, the Examination whereof I dare trust to every mans own breast.

9ly, It was fit for the People that their Kings should be above Law, because the severity of Law will not comply with that useful, tho illegal Justice which is requisite in special cases, for since *summum jus* is *summa injuria*, and since *impossibile est sola innocentia vivere*, we may well conclude, that absolute Monarchy is necessary to protect the guilty innocent by Remissions, to break Laws justly, in a Court of Chancery, and to crook them uprightly in our Courts by an *officium nobile*. For strict and rigid Law is a greater Tyrant, than absolute Monarchy.

I know that some pretend that the 25. *Æt* 15. *Par. Ja.* 6. declaring the King to be an absolute Prince, is only to be interpreted in opposition to the Popes Authority, he being so far absolute, only as not to be Subject to the Pope, who pretended then a Jurisdiction over all Kings. But the answers to this are clear; *First*, This Statute is made to declare the Kings of Scotland to have Right by their Inherent Prerogative, to their exacting Customs for all Merchandise;

dice, because they are absolute Monarchs,
 which Argument had been ridiculous, if this
 absoluteness had only been in opposition to
 the Pope, nor is there any mention of the
 Pope in all this Statute; and what interest
 hath the Pope in our Customs. *2dly*,
 When the Kings power is by our Statutes
 rais'd above the Pope, it is done by de-
 claring him Supream, and not by declar-
 ing him absolute. *3dly*, All Lawyers,
 and State-men divide Monarchies in ab-
 solute and limited Monarchies, and the
 word Absolute, is still taken in opposition
 to limited, as is clear by *Arnisæus, Bodin, &c.*
 And whereas it is pretended that these
 words in this Statute, acknowledging the
 King to be absolute, are only exprest tran-
 siently and enunciatively, but are not
 Decisive and Statutory. It is answered,
 that our Parliaments never give our Kings
 Prerogatives, but only acknowledge what
 our Kings have by an Inherent and Inde-
 pendent Right; and these words in this Sta-
 tute, are of all others in our Laws, exprest
 with most of Energy, for they are usher'd
 with, *It cannot be deny'd, but His Majesty*
has as great Liberties and Prerogatives, as
any Monarch whatsoever: and this acknow-
 ledgment is made the Foundation of His
Right

Right to exact Customs. And in true Reasoning, nothing is made the proposition of an Argument, but that which is most uncontrovertable.

I foresee that our Fanaticks and Republicans, will be ready to mis-represent absolute Monarchy, as Tyranny: But a Tyrant is he, who has no Right to Govern; and so he may be oppos'd, as the common Enemy of all the Society. And it is ridiculous to pretend with *Hobs*, *That we are oblig'd to obey whoever is once in possession*; for that were to invite men to Torment us, and to justifie Crimes by success. Nor can it be from this deduc'd, that since it is lawful to oppose any who are in Possession, that it is therefore lawful to oppose our Monarchy: because they have (as *Algernon Sidney* pretends) *Usurpt over us, a power inconsistent with our natural Liberty. And owe their Right to that Prescription, which the greatest Tyrants may maintain by force, and to that consent which they may procure by Violence, or Flattery.* For to this I answer, That our Monarchs have their power establisht by Birth-right, by Consent, by Prescription, and by Law; which are all the wayes whereby any Right can belegally Establisht. But it is a gross

mistake in *Buchannan*, and others, to conclude a lawful King punishable as a Tyrant, because he becomes vicious. For though God may punish him as such, yet his People cannot; that were to raise the Servant above the Master, and to occasion a thousand Disorders to redress one. and when King *James* acknowledges, that a good King thinks Himself made for his People, and not His People for Him. That is only said with reference to the Kings duty to God, but not with Relation to the Peoples Duty to their King. And when *Trajan* deliveriug the Sword to the *Proconsul*, said *Pro me, si mereor, in me*. *Groius* observes justly, That this was spoke as a Philosopher, and not to subject himself to the others jurisdiction. And so *Buchannan* did most traiterously advise the Printing this on our Coin. Nor do's this Title of absolute Monarch, empower him to dispose upon our Estates. For it is fit to know, that Government is the Kings, and Property is the Subjects Birth-right. Monarchy is a Government, and so can include no more, than what is necessary for Government. And though the *Turk* or *Mogul*, arrogat to themselves, the total Property of their Subjects, in this they are Tyrants, and not

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not Kings. And when our Statute above-mentioned, says, *That our Kings have as much power as they*, this is only to be understood of what Right they have by the Nature of Monarchy, *Rex nomen est jurisdictionis non domini*, say the Lawyers: For the Law having said, that all things were the Emperours, *h. bene a Zenone. §. Sed sci-mus C. de Quadr. Præscript.* The Emperor asked the famous Lawyer *Bulgarus* in what sense all was his, who is mightily prais'd for having answer'd, *Omnia Rex possidet imperio singuli dominio, Accurs: in præm. ff. in Verb: Sanctioni*, For what is once ours cannot be taken away without our consent: And therefore by the 5. *Act, 1. Par. Ch. 2.* It is declared lawful for the King to make Garisons, His Majesty entertaining them on His own expence. And by the *Act 3. Par. 3. Ch. 2.* It is declared that the people shall not be subject to free Quarter, &c. And yet right reason teacheth us, that all the Land of *Scotland* having been once the Kings (for the Law saith, that the King is *Sacris rati-one Corona*, in all the Lands of *Scotland*) His Majesty is therefore presumed Proprietar of all, and every thing belongs to him, if some other cannot instruct a right which is the sense of that Law, *Nemo terram nisi autoritate*

Regia possideto: And of King *Malcolm Can-*
mor's Law, that *Rex distribuit totam Terram*
Scotia hominibus suis. And it therefore clear-
 ly follows, that the King has *Dominium di-*
rectum, a right of Superiority, as all Superi-
 ors have, and that the people on whom he
 has bestowed these Lands, are oblig'd to con-
 cur in the expence with him, for the defence
 of it. For as if he had retain'd the Property,
 he would have been able with the Fruits and
 Rents to have defended it. So it is not agree-
 able to sense or reason that they to whom he
 has granted it, should not be oblig'd to de-
 fend it, especially seing all the Rights made
 by the King, are in Law presum'd meer Do-
 nations; For it cannot be deny'd but that all
 Lands were originally granted by the King,
 and so must have originally belong'd to him-
 self: for no person can give what is not his
 own; and our Law acknowledgeth, that all
 Lands belong to the King, except where the
 present Heretor can instruct a Right flowing
 from our King, and that he is the Fountain
 of Property, as well as of Justice. 2. In Law,
 all who are engag'd in a Society, as to any
 thing that is the subject of the Society, should
 contribute to its preservation; and there-
 fore the King having the *Dominium dire-*
ctum, and the Vassal *Dominium utile*, it fol-
 lows, that the Vassals of the Kingdom should
 con-

contribute towards its preservation, and the King may expect justly an equal Contribution towards the defraying the necessary expence, and thence it was, that by our old Law, all Heretors were obliged to furnish some *unum Militem, unum Sagittarium, or Equitem*: Some a Bow-man, some a Souldier, some a Horse-man: But thereafter the King having changed these Holdings, because all betwixt 60. and 16. were obliged to come to the Field with 40. days Provision, which was all that was then necessary; it follows, that now that way of making War being altered, the Subjects should contribute towards the way that is necessary for defending the Kingdom. 3. The King by His Forces protects our Persons, and by His Navies protects our Commerce, by His Ambassadors manages all our publick Affairs, and by His Officers, and Judges, administrates Justice to us: And so it is just that all this should be done on our expences, and that we should defray the publick expences of the Government, and so much the rather, because by a special Statute with us, it is declared that the King may impose what He pleases on all that is Imported, or may discharge us to export any thing without which we could not live; and what ever he gets

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from us, he distributes amongst us, without applying one shilling of it to his own private use.

The King, or whoever has the management of the Government, have in the opinion of Lawyers, *Dominium emittens*, a Paramount and transcendent Right over even private Estates, in case of necessity, when the common Interest cannot be otherwise maintained; and this *Grotius*, though no violent friend of Monarchy, doth assert very positively and clearly; and it cannot be denied that a King may take any mans Lands, and build a Garrison upon it, paying for it; and that in case of a Siege, the King may order whole Suburbs to be burnt down for the security of the Town: And whence is this power, save from that Paramount and Supereminent Right that the King has over all private Estates, for the good of the whole Society and Kingdom? Nor can it be denied, that the King may in time of War Quarter freely; and it is in his power to declare War, when, or where he pleases: Nor do the former Statutes oppose this, for they exclude not necessity that has no Law, and is it self that Law which gave *David* right to eat the Shew-bread, and the Christian Emperours right to sell the Goods of the Church for main-

maintaining their Armies, with consent of the Primitive Fathers; and this is so necessarily inherent in all administration, that the very Master of a Ship has power to throw over the Goodsof Passengers and Merchants in a storm, for the preservation of the Ship: And they are not enemies to the King, but to themselves, who would deny the King this power.

The third Class of Arguments that I am to use against these principles, shall be from Reason, and Experience in Fortification and Corroboration of our positive Law, and the nature of our Monarchy; for since humane Reason it self is lyable to so many Errors; and since men when they differ, are so wedded to their own Sentiments, that few are so wise as to see their own mistakes, or so ingenuous as to confess them, when they see them: Therefore prudence and necessity has obliged men to end all Debates by making Laws: and it is very great vanity and Insolence in any private men, to ballance their own private Sense against the publick Laws; that is to say, the Authoritative Sentiments, and the legal Sense of the Nation.

If we were then to Establish a new Monarchy, were it not prudent and reasonable, for us to consider what were the first Mo-

tives which induced our Predecessors to a Monarchy, and *Boethius* and *Lesly* both tell us, that least they might be distracted by obeying too many, it was therefore fit to submit to one, if then this Reason was of force at first to make us submit to a Monarchy, it should still prevail with us to obey that Monarchy, and not gape idly after every new Model, *Ne multos Reges sibi viderentur creare summam verum aut optimam, aut ipsi multitudini permittere aspernabantur*, sayes *Boethius*, fol: 6. Here the advantages of being Governed by *Aristocracie*, or *Democracie*, were expressly considered and rejected; so that we have our Predecessors choice, founded on their way of Reasoning, added to the Authority of our Law; and after, we their Successors, had seen the mischiefs arising from the pretences of Liberty and Property, with all the advantages that seeming Devotion could add to these. Our Representatives, after two thousand years experience, and after a fresh *Idea* of a long civil War, wherein these Arguments and Reasons adduced by *Buchanan*, were fortified and seconded by thousands of Debates: They did by many passionate Confessions, and positive Laws acknowledge, that the present Constituti-

on of our Monarchy. is most excellent, *Act*

1. *Par: 1. ch: 2d.* "That inevitable
 " prejudices and miseries do accompany
 " the invading the Royal Prerogative. *Act*
 " 4. That all the troubles and miseries they
 " had suffered, had sprung from these In-
 " vasions. *Act 11.* That all the bondage
 " they had groaned under, was occasioned
 " by these Distractions. *Act 2. Par.*
Sess: 2. Ch. 2. So that we have here al-
 so a Series of Parliaments, attesting the
 reasonableness of the Constitution of our
 Monarchy, and His Majesties Preroga-
 tives.

2. We must not conclude any thing un-
 reasonable, or unfit, because there are some
 inconveniencies in it; for all humane
 Constitutions have their own defects. But
 I dare say, the principles of my Adversa-
 ries have more than mine; for common-
 wealths are not only subject to erre, because
 they have their passions as well as King;
 but they are subject to more passions: for
 1. These who Govern in Common-wealths
 and *Aristocracies*, have Rivals whom they
 fear, and against whom, upon that account,
 they bear Revenge, which Kings want.
 2. They are not so much concerned in these,
 they Govern as Kings; the one considering
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the Common Interest , as a Tennent does Lands, of which he takes his present advantage , though he should destroy it ; the other caring for it as a Proprietar does for his own Ground ; the one Jading it, as a Man does a hired Horse ; the other using it as a Man does his own. 3. The people are ordinarily Governed by these who are the worst of men ; for these ordinarily can flatter and cheat most, and can best use the Hypocrites Vizorn : Whereas the best Men ordinarily are abstemious, modest, and love a private Life , and were there ever such Villains as Governed us in the last Age? And in this too, can we deny but our pretenders to Liberty and Property, are the Cheats of the Nation ? Who, to be in Employment, hate such as are in it, or are such as are discontented for being put out of it, or are Bankrupts , who resolve to make up their broken Fortunes by it. 4. Even good Men when they are raised to Govern , grow Insolent, of which Princes are not capable , for they are still the same. 5. Kings and Princes know they will be Charged with what they do ; but the multitude knows , that the publick in general, and not any one Man will be blamed ; and so every private Man thinks himself

selfsecure, whilst he shifts it over on another, or else lessens it, by dividing it amongst many. 6. They are very subject to Factions, most Men scorning to obey their fellow Subjects; and when they are in Factions, who knows whom to obey; and those Factions will again subdivide in new ones; and so *in infinitum*; and when either prevails, they spare none, because their opposits are Enemies: But Kings pity even Rebels, remembring that they are their own. And I dare say, that more were Murthered and Ruined in one year, of the last Reforming Age, than suffered by the great *Turk*, the *Mogul*, and the King of *France* in twenty years. And more severity was exercised in one year by these Reformers, than by all this Race of our Kings; these 600. years. 7. If it be said, that Kings have ill Ministers, so have Common-wealths and we observ'd in *Scotland*, that after we had taken from our King the Prerogative of chusing Judges and Counsellours, our Parliament did the next year, choose the greatest Block-heads, and Idiots in all the Nation, whom the Ring-leaders advanced, to the end they might Govern all themselves; to which Cheat, Kings cannot be lyable, it being their Interest to have able Ministers,

sters. And whereas Kings have no Interest to prefer one to another : yet in popular Governments , every one endeavours to prefer his own Relations. 8. In difficult Cases, haste and expedition requires , that one should be trusted : and even the *Romans* behoved in great dangers , to imploy a Dictator , who was accountable to no man for any thing he did. 9. There can be no Secrecy in popular Governments, as in Monarchy, and what many must know, all may. 10. Enemies may alwayes get some in popular Governments to side with them , and upon specious pretexts , to retard all good Designs ; and when popular men are Debating for shadows, the occasion slips away irrecoverably. 11. Either Common-wealths imploy no extraordinary persons , being ever jealous : or if any man become such by great Actions, or long Experience , he is presently ruined. And it is observable in this Age , that the great *Zobieskie* durst never undertake any great thing since he became King of *Pole*. And if we consider the severity of *Venice* against their Nobles , and their Executing Men, without citing or hearing them, and that upon meet jealousies. We must confess, that there is less Liberty there, than under
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the worst of Monarchies ; nor was ever any people so miserable as *Rome*, during their Republick, having been ruined in every age with civil Wars, and having had no great man, who died not miserably, after many false and popular Accusations, and did not *de Wist* find little of that Justice which he magnified in Republicks.

But whatever may be said against the inconveniencies arising from the passions, humours, and insolencies of the Populace in Common-wealths, yet much more may be said against the allowing that Prerogative to them under a Monarchy, for that were to Distract for ever the Government betwixt two contradictory Supream Powers, and make the People miserable in not knowing whom to obey when they differ, and to make Government, which should defend against a Civil War, become the cause of it; for how can it be in reason expected, but that if the People know they can controule the King, ambitious, and discontented Ring-lerders, or ignorant and bigote Multitudes will be alwayes endeavouring to use this their Prerogative, since it seems alwayes glorious, and oft times advantagious to oppose Kings, whereas on the other hand Kings cannot but be alwayes jealous of, and

fear popular Invasions, and both these Powers shall like Neighbouring Princes, be alwayes endeavouring to gain advantages upon one another, and in these Contests shall be spent all the time and pains that should be bestowed in resisting the Common Enemy, which cannot but very much lessen the Love which Princes ought to have for their People, and the Respect which People ought to have for their Prince, and how can it be imagined, but that in this case the People shall alwayes groan under greater misfortunes then these which they felt betwixt the *Bruce* and the *Baliol*, the King and Queen? Pretended Factions in the Minority of K. *James 6.* and the Houses of *Lancaster* and *York*, because the one can never end, being inherent in the nature of the Government, whereas the other are but accidental and temporary, All which cannot but appear very probable, as well as dreadful to those who consider the late Rebellion, wherein the People pretending that the King had violated their Liberties, they murder'd and pillag'd all such as were not of their Opinion, and after they had ruin'd their Prince, the People divided and fought one against another, the greater part pretending they ought to be obeyed, because
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of their numbers, and the lesser pretending that they were the sounder part, and had the better Cause, and it is impossible in such a case to find a Judge of Controversies. Which is another unanswerable Argument against the Peoples Supremacy, by which all they can gain is an endless Liberty of ruining one another without hope of Redress. Nor can Parliaments remedy this, for we have seen opposite Parliaments sitting at the same time Forfeiting one another, whilst the astonished Multitude stood at a Gaze, not knowing whom to obey, and praying that God would Re-establish our lawful Monarchy, with which, when it was Miraculously Restored, they were so overjoyed as men are when they are free'd from the Gallies, in which they had been Treated as Slaves.

And whereas these Republicans pretend that the King is but a Physician, this shews that they design to have no King, for any man may lawfully change his Physician, and *Buchannans* laying so much weight on this Argument makes me suspect much his honesty, for no man can have so mean an opinion of his Sense. And his comparing the Monarch to a Tutor is very extravagant, for no man is sworn to have such a mans

Heirs for Tutors, but though he were a Tutor, no man can remove his Tutor at pleasure, as they say the People may remove their King. Nor is a Tutor to be laid aside but by an Action before a Superior Judge, wherein he is to be proved to have Malversed, and therefore since there is no Superior Judge except God, and that the People are not his Superiors, it clearly follows that the People cannot lay aside their King.

A Tutor has not an inherent Right of Property as a King hath to the Government of the Nation, and to the Imperial Crown thereof, only I joyne so far with *Buchanan* in these Rhetorical expressions, that I really think the Multitude is alwayes so mad that they need a King to be their Physician, and of so weak a Judgement like Minors, that they need him for a Tutor, and without his assistance and protection every hypocritical Bigot, and ambitious Usurper would cheat them at his pleasure, and makethem not only a Prey, but a Tool in their own Slavery.

Nor is there any force in that Argument, the King was made for the People, and not the People for the King; and therefore the People are Nobler than the King, and ought

ought to be preferred to Him. For to this it is answered, that 1. The question here is not, who is more preferable, but who is the Superiour? And though one good Christian be preferable to a thousand, who are not so, yet their Interest in the Commonwealth is not preferable; the wiser part is still preferable to the greater part: and yet the greater will over-rule the wiser. A Shepherd is ordained for the Flock; and yet it cannot be concluded, that a Flock of Brutes is to be preferred to any Reasonable Creature. 2. The Kings Interest and the Peoples are inseparable in the Construction of Law, which presumes, that what the King does, He does for the People, and there is none above the King, that can Judge Him, if He does otherwise. 3. Whether the Kings Power be derived from God, or from the People? Yet if it be derived from God, it is preferable, because of Gods Ordinance: Or if from the People, it is preferable, because they, by Electing Him King, have consented that it should be so, and they having Trusted Him with the publick Interest, the publick Interest is still preferable. I know that *Buchanan* and others, value themselves much upon the Instance of the *Bruce* and *Ba-
liol*,

list, in which the people did Declare, that they preferred the *Bruce*, because the *Balliol* had enslaved the Kingdom to the *English*. And it is generally urged, that all Lawyers are clear, that if a King Alienat His Kingdom, His people may Disclaim Him. But my answers are, That if a King will Alienat His Kingdom, the Subjects are free in that case, not by their power to reassume their first Liberty; but because the King will not continue King, and they are free by His Deed, but not by their own Right. 2. Even in that case, Lawyers do irritat and annul the Deed; but dissolve not the Contraveeners Right. And as to that particular Instance, it is well known that King *Robert* the First, or the *Bruce*, as we call him, was desirous that the Parliament should threaten to choose another, if He submitted His Interest to the Popes Decision, who pretended then to be the Supream Judge, over all Kings. And *John Major*, as many other Popish Writers were still enemies to the Supremacy of Kings upon that account. But though the *Bruce*, to please the people, should have shunned to quarrel what they did in such a Juncture; yet that could not wrong the Monarchy, nor His Successors, as shall be proved.

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Having thus cleared, that the Kings power is not derived from the people, even though they had Elected Him, and that He is an absolute King, both by our Laws, and the Nature of our Monarchy; and that all this is most consistent with right Reason. I come now to draw some Conclusions from these Principles.

The first Conclusion shall be, that our Parliaments are not co-ordinat with our Kings, in the *Legislative* Power; but that the *Legislative* and *Architectonick* Power of making Laws (as Lawyers term it) does Solly reside in the King, the Estates of Parliament only consenting, which will further appear by these Reasons, 1. It cannot be denied but we had Kings long ere we had Parliaments (we never having had any Parliaments till King *Kenneth* the 3^{ds}. time, according to the Computation of the severest Re-publicans themselves; for till then we Read only of the *Proceres Regni*, or the Nobility, or Chiefs of Clanes, and Heads of Families, who assembled upon all occasions, to give the King advice) and therefore our Parliaments cannot pretend that they were designed as a Co-ordinate power with the King, whilst he did what was right; much less to be his Judge, when

when he did what was wrong. 2. That our Kings made Laws of old without any consent, and that these were acquiesced in by the people, is clear, not only from our Histories, which do tell us, that such Kings made such Laws, without speaking any thing of either Nobility, People or Parliament, but even from our old Books of Statutes, wherein there is no mention made of the consent, of either the Nobility or Parliament: The Laws at that time beginning simply, *The Kings Statutes*, as in all the Statutes of King *William*, King *Alexander 2d.* and in the Statutes of King *Malcolm Canmore*: King *David* the first, and King *David* the 2d. where there is not so much as mention made of the Nobility, or the Parliament, in the very beginning of the Statutes, and that at other times the Nobility were only called, and that only the Nobility did sit, is very clear from the Inscriptions of these Parliaments, such as in the *Parl. K. Alexander 2d.* which bears, to have been made with the common consent of the Nobility, *cum communi consensu Comitum suorum*, without speaking of any other State. Nor do I find a word of Burgeses, till the Parliament of *K. Robert* the 3d. in 1400. and even according to this late

late Constitution, it is undeniable that the Parliament have not even an equal power with the King, much less a power above him. 3. How can that Judicature have a Co-ordinat power with the King, when no man can sit in it: but by a privilege from the King: but so it is, that all that are Members of Parliament, sit there by a special privilege from the King, and there is nothing considered to capacitate them to sit, but the Force and Energie of that Privilege, without respect, either to what Land they possess, or what number of People they represent. And thus the Nobility and Bishops, sit there, by vertue of the Kings Creation; and the King may Creat a hundredth Noblemen that morning that the Parliament is to sit, though none of all the hundredth, have not one foot of Land in *Scotland*; and though the Barons must have some Land, else they cannot Represent any Shire; yet though a Gentleman had 5000. pounds *Sterling* a year, he could not sit there, except he be the Kings immediate Vassal, and holds his Lands of His Majesty *in capite*: So that he sits not by vertue of his Land, but as Capacitated by the King. And though these who Represent the Burrows Royal are Commis-
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onated by the people of their Burghs; yet the people who sent them, are not considered in that Commission, but the power only which the King gives them to send: For though a Town had a hundreth thousand Inhabitants, and another only twenty Inhabitants: yet these 100000 could not be Re-presented in Parliament, except the King had Erected their Town in a Burgh Royal, From which I evince two things, 1. That the Parliament is the Kings Council, in which he may call any He pleases, and not as the peoples Representatives only, since there are great multitudes in the Nation, Represented by none there: For tho they Represent their Constituents in Parliament, yet the power of sending Representatives, is derived from the King Originally, and flowes not from any proper Right inherent in those whose Representatives they are. 2. That Judicature cannot have a Co-ordinat power with the King, which He needs not Call except He pleases, and which He can Dissolve when He pleases: and in which, when they are Met, He has a Negative Voice, which can stop all their Proposals, and Designs; For, if they were Co-ordinat with the King, then *par in pa-*
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rem non habet imperium, and it is against common Sense to think that these two can be equal, when the power of the one flows from the other; By which is likewise clear that the great principle laid down by *Buchanan*, viz. That the King is *Singulis* Major, *universis* Minor, greater than any one, but less than the collective Body of the Parliament taken together, is absolutely false; because he has a Negative Voice over that collective Body, and as they cannot Meet without him, so he can Dissolve them when he pleases, and I confesse it seems to me unintelligible how they can be greater than the King, by vertue of a power which they Derive from the King.

4. The Parliament is called by the Kings Council, as is clear from the Inscriptions of all our old Parliaments. Thus the Statutes of *Alexander* the 2. begin, *Alexander* By the Grace of God King of *Scots* did by the Common Council of his Earls Decree, &c. The Statutes of *K. Robert* bear to be by the Common Council of his Prelats, &c. The first Statute of King *Robert* 2. Bears that none who is Elected to be of the Kings Council shall bring another to it who is not Elected. The 8, and 13. Parliaments of *K. Ja.* 1. And the 2, 3, 4, and 7. of *K. Ja.* 2. Bear for Inscriptions, The Parliament

ment or general Council of such Kings. And the 1. Act of that 8. Parliament K. Ja. 1. Bears *Quo Die Dominus Rex deliberatione & consensu totius Concilij, &c.* And it is against Sense to think that any mans Counsel can have Authority over him, for as we say Counsel is no Command. 5. The Parliament was but the Kings Baron Court, as is very clear to any man who will read the old Registers of Parliament, in which he will see that the Parliament was Fenc'd, and the Suits were called, and Absents Unlawed as in other Baron Courts, where of many publick Records are extant, and I shall only set down that of the 8. Parliament Ja. 1. The words of which Inscription are, *In Parlamento octavo, vel Concilio generali Illustrissimi Principis, Jacobi Dei gratia Regis Scotiae apud Perth & inchoato tificato & approbato, tanquam sufficienter & debite praemunito, per tres Regni Status, duodecimo die mensis Julij Anno Domini millesimo, quadringentesimo vicesimo octavo, cum continuatione dierum & temporum, summariis & vocatis debito modo & more solito, Episcopis, Abbatibus, prioribus, Comitibus, Baronibus & omnibus libere tenentibus, qui revent in capite, de dicto Domino nostro Rege & de quolibet burgo regni, certisburgensibus,*

comparentibus omnibus illis, qui debuerunt, voluerunt & potuerunt interesse, quibusdam vero absentibus, quorum quidam fuerunt legitime excusati, aliis per contumaciam se absentantibus, quorum nomina patent in rotulis sectarum, quorum quilibet adjudicatus fuit in amerciamiento decem librarum ob ejus contumaciam. And that the King was Judge what Barons should come to the Parliament, is most clear by the 75. Act Par. 14. Ja. 2. whereby it is declared, no Free-holder under the sum of 20. pounds, shall come except he be specially called by the King, either by his Officer, or by Writ, and tho afterwards the King allowed two Barons of every Shire to be sent to Represent all the Barons for saving Expences, yet even after that Concession it is declared by the 78. Act Par. 6. Ja. 4. That no Free-holder be compelled to come, but gif our Sovereign Lord Writ specially for them.

It being thus clear that the Parliament is the Kings Baron Court, it seems a wonder to me how it could have entered into the heart of any sober man to think that any mans Baron Court, but much lesse the Kings Baron Court, should have power and jurisdiction over him, and that it should be lawful to them, as Buchanan and these o-
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ther Authors assert, to punish him or lay him aside, all which assertions are equally impious and illegal.

6. When the King resolves to lessen any way his own Power, this is not done by the Authority of the three Estates, as certainly it would be, if they had the power to lessen his Authority, but the King does the same from his own proper Motive, as when the King binds up his own Hands from granting Remissions in cases of forethought Felony, *Ja. 4. Par. 6. Act 63.* And when an Act was to be made, discharging the Lords of the Session to admit of privat Writings from the King to stop the procedure of Justice, this is not Enacted by the three Estates but only by the King, and is founded upon the Kings own Promise, *Act 92. Par. 6. Ja. 6.* And in all Acts of Parliament the King only Statutes as Legislator, and the Parliament only Advise and Consent, which shews that they are not Co-ordinat with the King, as is asserted by *Buchannan* and others, much lesse above him. And the Acts of Parliament in the late Rebellion having run thus, *Our Sovereign Lord, and the three Estates* contrare to the Tenor of all the Laws that ever were made in *Scotland*. The Parliament
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returning to their duty, ordained that Style to be altered, and to bear as formerly, *Our Sovereign Lord, with Advice and Consent, &c.*

But lastly, what advantage can the people have by placing their security in the Parliament, since they are so lyable to Passions, Errors, and Extravagancies, as well as Kings are, and have, if *Buchanan* be believed, betrayed the interest of the Kingdom, since *K. Kenneth* the seconds time, now above 700. years; and they are ordinarily led by some pragmatcal Ring-leaders, who have not that interest to preserve the Kingdom that Kings have: and since the King may make so many Noble-men and Burghs Royal at pleasure, by whose Votes he may still prevail. What security can we have by giving them a power above the King, or how can they have it?

From all which it may clearly appear that we have had Kings long ere we had Parliaments, and that the Parliaments derive their power from the King; and that at first our King only called the Heads of Families, and his own Officers, as his Council, with whom he consulted, without any necessity to call any others than he pleased, there being no
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Law, Article, nor Capitulation obliging him from the beginning thereto: And our Kings were so far from having Parliaments associated with them in their Empire, that there is no mention at all of them, or of any condition relating to them in the first Institution of our Kings above-related; nor were there any Parliaments in being at that time. But after the Feudal Law came to be in vigor, then our Kings looking upon the whole Kingdom as their own in property; King *Malcolme Canmore* did distribute all the Land of *Scotland* amongst his Subjects, as his Lidge-men, which is clear by the first Chapter of his Laws; and according to the Feudal Law, all the Vassals of our Kings compeared in their Head-Court, and there in consulted what was fit for the Kingdom; but thereafter the way of making War, requiring Money and Property belonging to the Subject, as Government did to the King, it was necessary to have their consent for raising Money: And from this did arise the inserting the advice and consent of the three Estates in our Acts of Parliament.

From this also it is very clear that their opinion is very unsolid and ill founded, who think that Kings can do nothing without a special

special Act of Parliament, even in matters
 of Government. As for instance, that he
 cannot restrain the licence of the Press, or
 require his Subjects to take a Bond for secu-
 ring the Peace; for these and the like being
 things which relate immediatly to Govern-
 ment, the King has as much right to regu-
 late these, as we have to regulate and dispose
 upon our Property, Government being the
 King's Property. 2. Though the Monar-
 chy had been derived from the People, yet
 how soon our Kings got the Monarchy,
 they got every thing that was necessary for
 the Explication and Administration of it,
 which as it is common sense and reason, so it
 is founded upon that most wise and just Ma-
 xime in Law, *Quando aliquid conceditur, om-
 nia concessa videntur, sine quibus concessum ex-
 plicari nequit.* 3. I desire to know where
 there is yet a Law giving the King a Nega-
 tive voice, a power of erecting Incorporati-
 ons, or a power to grant Remissions for
 Crimes, or Protections for Civil Debts, and
 yet the people is far more concerned in these;
 and the King's having power to do these, and
 a thousand other things, doth rather oblige
 and warrand me to lay down a general rule,
 that the Kings of Scotland can do every
 thing that relates to Government, and is ne-
 cessary

necessary for the administration thereof, though there be no special Law or Act of Parliament for it, if the same be not contrary to the Law of God, Nature, or Nations.

The second Conclusion that we draw from these former principles, is, that Princes cannot be punished by their own Subjects, as *Buchanan* and our Republicans do assert, which is most clear by the former Laws, wherein it is declared, that *the King is a Sovereign and Absolute Prince, and deriving his power from God Almighty. That it is Treason to endeavour to depose, or suspend the King.* Wherein our Law is founded on the nature of Monarchy; for if He be Supream, He cannot be judg'd, for no man is judg'd but by his Superior, and that which is Supream can have no Superior: and on the Principles of the Law of Nature and Nations, because *sand the Law, no man can be both the person who Judgeth, and the person Judg'd; and it is still the King who Judgeth, since all other Judges do represent him, and derive their power from him, Ipse se prator cogere non potest, quia triplici officio fungi nequit suspectum dicentis, & coacti, & cogentis L. Ille a quo ff. ad Trebell.* It is a principle in all Law, that Jurisdiction and all other Mandates cease with the power that granted it, and

and therefore as they acknowledge that a King cannot be cited till he have forfeited His just Right, so how soon he has forfeited it, all the power of the ordinary Judges in the Nation falls, and becomes extinct, and no other Judge can Judge Him, because no other Judge can sit by vertue of any other Authority, till it be known that he has forfeited his, and that cannot be till the event of the Process; and if the People be Judges, yet they cannot assume the Government till the King has forfeited it: And why also should they be Judges, who have neither knowledge nor moderation, who are acted by humor, and delight in insolence? And how shall they meet? Or who shall call them? Nor can the Parliament judge them, because they derive their right from the King, as shall be prov'd: And though they were equal, yet no equal can judge another, *par in parem non habet Imperium, nemo sibi Imperare potest*. No man can command himself, *l. si de re sua, ff. de recept. arbitr. Nemo sibi legem imponere potest, l. quid autem ff. de donat. inter virum & uxorem* and therefore the Civil Law, which is ours by Adoption, does positively assert, that *Princeps legibus solutus est*, the King is liable to no Law, *l. princeps, ff. de legibus*: For

(50)
though He be lyable to the Directive Force
of the Law, that is to say, He ought to
be Governed by it as His Director : Yet
He is not lyable to the Co-ercive Force of
the Law, as all Lawyers that are indiffe-
rent do assert, *Hermenopol. l. 1. tit. 1. Sect.*
48. 'o βασιλις νόμῳ ἢ νόμιστάτι ἢ νόμῳ ἀναγκάσθαι ἢ
ἀναγκάζεσθαι; The King is not Subject to the
Law, because offending against them, he
is not punisht, *vid: Granswinkell. cap. 6.*
Armif. cap. 4. Francisc. a victoria Relect.
3. num. 4. Ziegler. de jur. Majes. cap. 1.
num. 12. with whom the Fathers also agree,
Ambros. in Apol. David cap. 4. Liberi sum
Reges a vinclis delictorum neque enim ullis
ad poenam vocantur legibus, tuti Imperij pote-
state Isidorus 3. sent. cap. 31. populi peccan-
tes Judicem merentur, Reges autem solo Dei
timore, metuq; gehenna coercentur: And in
this Sense, they take these words, *Psal.*
51. ——— Against thee, thee only have I
sinned; and I was glad to find in Bishop
Ussers Power of Prin es, amongst ma-
ny other Citations, that the Rabbies, and
particularly Rabbi *Jeremiab* own'd that no
Creature may Judge the King, but the Ho-
ly, and Bless'd God alone, in which also Hea-
thens agree with Jews and Christians, *Ec-*
phantas the Pithagorean makes it the Pri-
viledge

village of God, and then of the King, to
 be Judg'd by none, *Stobæus* Sermon. 46.
 and *Dion* in *Marco Aurelio* tells us, that it is
 certain, that free Monarchs cannot be Judg'd,
 have by God alone, and if it were otherwise,
 we should see them very unsecure, for the
 ambition and avarice of insolent Subjects
 should never or seldom miss to form their
 Process, and why should Parties be Judges?
 But to demonstrate the Justice Kings and
 Princes are to expect from the Populace
 and Mobile, let us remember their Material
 Justice, in the usage of our Saviour, when
 they cryed, *Crucifie him, Crucifie him*; their
 Sentence against King *CHARLES* the
Martyre, when they were at the height of
 their pretensions to Pietie, and publick
 Spiritedness; their usage of *de Witt*, the
 Idolizer of them, and their Common-
 wealth: and if we want a true *Idea* of their
 Form of Process, we will find it in their
 usage of the Arch-bishop of *St. Andrews*
 and others, no L'bel, no Citation, no
 Defenses, no Sentences, no time to prepare
 to die: and yet all this are the Dictates of
 pure and devout publick Spiritedness. *Bu-*
channans Bloody Arguments for this posi-
 tion are, that Tyrants have been Murther-
 ed with applause, and Princes would be-
 come

come licentious, if they were not Restrained; by the just fear of being called to an account: That the *Roman* and *Venetian* Magistrates have been punish'd by the people, and that the ordinary Judges of the place have Judg'd them: and that some of our Kings, as well as these of other Nations, have been punish'd as Tyrants.

To which I answer shortly, that Inconveniencies must not prevail with us to break our Oathes, and overturn our Laws, for nothing has so great inconveniencie in it, as this has, these being but partial, and this is a total Inconveniency. And the *English* Lawyers agree, that a mischief is better than an inconvenience, and this should have been considered, before we swore to Monarchy: and if the people were Electors, as they never were; yet they should have reserv'd this power, or else they cannot now challenge it. But though our Law were not clear, as it is most uncontroverted upon this point: Yet right Reason should perswade us to have reserv'd no such power: For as Kings may erre, so may the Judges who are to Try them: and it is more probable their Tryers will, because they may be acted by Revenge, Ambition,

tion, or Popularity; and there is nothing
solvable to erre as the popalace.

The *Romans* and *Venetians* might have
punish'd their Magistrates, because these
Magistrates were not Vested with a Supream
power; nor were they Sovereigns as our
Monarchs are. And those Judges who
Try'd them, deriv'd not their power from
those Magistrates who Try'd them, as our
Judges do; for the same consent, and
compact by which they were made the
Chief, the others were made also Magistrates,
which cannot be said of absolute Monarchs,
who derive not their power from the people
as these do, and the Instances of Kings
who have been Murder'd, are Crimes in
them, who did commit them, and so
should not be Rules to us. And generally
the best of Kings have been worst us'd. But
who can escape by innocence, when King
CHARLES the *Martyre* fell by Malice:
Such also as cry up the Murtherers of Ty-
rants, who had no just Right, never meant
to allow the Arraignment of lawful Mo-
narchs, who, when they erre, have God
only for their Judge; and if they fear not
Him, and eternal Punishment, they will
not probably fear mortal Men, and their
own Subjects whom they can many wayes

escape. 2. There is no Creature so unreasonable, but he will use his own with discretion, though there be no Law obliging him to it, nor Punishment to be inflicted, if he do otherwayes: who burns his own House, or drowns his Lands, though he may do it? For the Law considers, that a King is either mad, and if so, he will respect no Law, and should not be punished, at least he will not stand in awe for fear of it, or else he is of a sound Judgment, and then he needs no Law; and therefore, Why should we apprehend that a King will destroy His own Kingdom. 3. A King is also obliged by His Fame, to do things worthy of His high Trust, and things able to abide that conspicuous sight to which he is expos'd. 4. Though His people ought not to Rebel, yet no thinking man can be sure that they will not. And therefore even the greatest Tyrants fear such accidents, though they know they are not bound by these Laws, that tie Subjects. And if all these fail, yet we must reverence Gods Dispensations, and expect a redress of these unusual Emergents from his Divine Goodness, for whose sake we suffer them; Rather then expose all to ruine, by endeavouring a revenge, that may be so unjust, in
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the preparative, and dangerous in the event.

The 3. Conclusion which I shall draw from the former principles, shall be, that as it is not lawful for Subjects to punish their Kings, so neither is it to rise in Arms against them upon what pretext soever, no not to defend their Liberty nor Religion. Which Conclusion also I shall endeavour to Establish on sure foundations of Positive Law, Reason, Experience, and Scripture. As to our Positive Law, it is clear, for by the 3. *Act Par. 1. Ja. 1.* "It is declar'd Rebel-
" lion to rise in Arms against the
" Kings Person: And by the 14. *Act 6.*
" *Par. K. Ja. 2.* It is Treason to Re-
" bel against the Kings Person or Autho-
" rity: By the 25. *Act Par. 6. Ja. 2.* It
" is Treason to rise in fear of War against the
" Kings Person or his Majesty, or to lay
" hands upon his Person violently, whatever
" age they be of, or to help or supply these
" who commit Treason. By the 131 *Act 8.*
" *Par. Ja. 6.* All the Subjects are discharg-
" ed to Convocat for holding of Councils
" or other Assemblies without his Majesties
" expresse Warrant; and by the 12. *Act*
" 10. *Par. K. Ja. 6.* The entering into
" Leagues or Bonds without his Majesties

“ special Command is declared to be Sedi-
 “ tion. All which Acts are prior to *Bu-*
channans time, and consequently he was ve-
 ry inexcuseable in advancing this Rebellious
 Principle. And these Laws having excepted
 no case, exclude all cases and pretexts of
 rising in Arms against the lawful Monarch;
 but our unhappy Countrey-men having by a
 long and open Rebellion oppos’d the most
 devout, and most just of all Kings upon the
 false pretexts of Liberty, and Religion, the
 Parliament of this Kingdom, from a full Con-
 viction of the Villanies of these times, and to
 prevent such dangerous Cheats for the fu-
 ture, they did by the 5. Act, Par. 1. Char. 2.
 Declare it to be Treason for any number of
 his Majesties Subjects to rise in Arms upon a-
 ny pretext whatsoever, and to shew that all
 such Glosses as were us’d by *Buchannan* were
 absurd, and did not evacuate the first Laws,
 though general, the Parliament did by the
 4. Act of that 1. Parliament declare that any
 Explanation or Gloss, that during the late
 Troubles hath been put upon these Acts, as
 that they are not to be extended against any
 Leagues, Councils, Conventions, Assemblies,
 or Meetings, made, holden, or kep’t by the
 Subjects, for Preservation of the Kings Ma-
 jesty, the Religion, Laws, and Liberties of
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the Kingdom, or for the publick Good either of Kirk or Kingdom, are false and Disloyal, and contrare to the true and genuine meaning of these Acts. Which Statute is a clear decision against *Buchannan*, finding that the Statutes that were prior to his time, and all other such general Statutes made in favours of the King, did formerly strike against his Principles and Distinctions. As also to preclude all avenues to Rebellion by teaching, defending, or encouraging others to Rebel upon these pretexs, as the former Act declared, that actual rising in Arms was Rebellion. So by the 2. Act Sess. 2. Par. 2. *Charles 2.* It is declared Treason for any Subject to maintain these positions, *viz. That it is lawful for Subjects upon pretence of Reformation, or any other pretence whatsoever, to enter into Leagues, or Covenants, or to take up Arms against the King, or any Commissionated by him.*

2. All the Arguments formerly adduc'd against the power of the Subject to punish his Person, do fully prove likewise that they have no power to rise in Arms against him. For either the collective Body of the Subjects are Superior to him, and if so, they may not only rise up in Arms against him, but they may punish him; but if the King

be Superior to them, as has been formerly prov'd, then it cannot be lawful for Subjects to rise up in Arms against him, no more than it is to punish his Person. Nor can I see how all such as declare for a *Defensive War*, are not to be concluded guilty of designing to Murther the King, for if the King come in Person to defend his own Right, as certainly he will, and must; can it be thought they will shoot at none, least they kill him? and if they shoot, how can they secure his Sacred Person? and if they kill him in the Field, are they less guilty of his Murther, than these *Russians* who lately design'd it? Or doth it lessen the guilt that these design'd to kill him alone privately? whereas our moderate men will in face of the Sun, and with display'd Banners against God and him, kill with him all such, as being perswaded that they are obliged before God to assist him, expose their lives for their duty.

3. That dangerous, though specious Principle of defensive Arms, is inconsistent with that order of Nature which God has established, and which is absolutely necessary amongst all other humane Relations; and by the same Analogy, by which we allow Subjects to rise against their Prince,

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we may much more allow Children to rise against their Parents, Servants, against their Masters, Souldiers against their Officers, and the Rabble against their Magistrates: for the King does eminently comprehend all these relations in his Sovereignty, as inferiour Branches of that Paramount, and Monarchical power. And what a glorious state should mankind be left in, if Anarchy were thus Establish'd, and every man should be invested with power to be his own Judge? Or dares any reasonable man assert, that this is fit to be allowed in the present condition of Mankind, for since the generality of men can scarce be contained in their Duty by the severest Laws that can be made, what can be expected from them, when they are loosed from all Law, and are encouraged to transgress against it?

If the multitude could prove that they were infallible, and that no oppression could be expected from them, some thing might be said, why we might ballance them with authority. But since both Reason and dolefull experience, teach us, that generally the multitude consists of Knaves and Fools, who alter not to the better by Conspiring together, nor become juster, for
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being led by such ambitious, and discontented Spirits, as ordinarily lead on Rebellions, It is safer to obey those of the two fallible Governours, whom God hath set over us, and whom the Law ties us to obey, and to whom also we are bound by the Oath of Allegiance; especially, seeing thus we may probably expect, that they will be more careful of us, as being their own, than meer Strangers, who use us only for their own Ends. And at the worst in the King, we can have but an ill Master, whereas in allowing Subjects to usurp, we may fight to get our selves hundreds of Tyrants, and these two fighting against one another, so that we shall not even know which of these Devils to obey.

The Arguments that can be adduc'd to justify this Principle of Defensive Arms, are almost answered in the former Article, *viz.* That there is a mutual Obligation betwixt King and people, so that when He breaks the one, they are free from the other, and that all Government is Establish'd for the advantage of the People, and thus these few Arguments peculiar to this Point, remain now only to be here solv'd. 1. That self-defence is by the Law of Nature allow'd to all, and even to Brutes, why then should
men

men who may lose more, who deserve better, and can use self-defense more innocently be debar'd from it ? 2. We see in Scripture, that the people deserted and oppos'd their Kings for Religion. 3. This has been allow'd with us in the instance of King *James* the third, against whom his Subjects rose in Rebellion, for Mis-governing and oppressing His people, and this opposition, was first justified by God, in the success he gave to their Arms, and thereafter by a special and express Act in the ensuing Parliament, which stands yet unrepeal'd.

To which I shortly answer, that as to the first of self-defense in Brutes, we must still remember, that God having design'd Government to bridle the Extravagancies of restless Mankind, he has appointed Magistrates to be his Vicegerents and Representatives, and has entrusted them with his power, and so opposition to them is unlawful, because it is not lawful against him; and because if it were allow'd, all would pretend to it, and so there should be no Order, nor Government. And that this may be the better observ'd, God has endowed man with Principles fitted for these ends of Order and Society, amongst which, one is,

is, That the publick Safety of the whole is to be preferr'd to the Safery of any one man, or of any number of private men, who are not to be considered as the publick, because that is the publick Interest, which is the Representative of the Nation, and that this Principle may be the better obey'd, he has commanded men to suffer injuries, rather than occasion Disorders, and has promised to reward Patience and Submission for his sake, with eternal Life, a Nobler Prize, than we here can contend for.

This being then Premis'd, It is answer'd, that though Brutes may defend themselves, because Order and the common good of Societies are not there concern'd; yet there is no reason to extend this to Men, whose self-defense against Authority occasions more mischief, than it can bring advantage: and if this Argument hold, it would prove, that every man who is unjustly Condemn'd, or at least thinks so, may kill the King, or His Judge; Servants might bind their Masters, and the people of any private Town might pull down their Judge from the Bench, when they thought he oppress them. And as these must submit, because they expect Reparation from a high-

higher Tribunal. So God has promised Reparation to those who suffer for his sake; and the greatness and sureness of this Reward, makes this no uncomfortable Doctrine, and this Submission is as necessary, and rather more, for mens preservation, than Resistance; and is a kind of self-defence, since opposition to Authority would bring a certain ruine, and confusion, in which more would perish, than opposition by private self defence would preserve. Upon which Christian Principles also, Ames. a Protestant and Calvinist Divine has resolv'd that, *In bonis temporalibus tenetur quisque personam publicam sibi ipsi præferre, verum enim totius pluri faciendum est quam bonum alicujus partis.* Cas: consciens: l. 5. cap. 7. *Thef: 14. and Lex Rex* confesses, p. 335. That a private man should rather suffer the King to kill him, than that he should kill the King, because he is not to prefer the Life of a private man, to the Life of a publick man.

And whereas it may be pretended, that though this opposition should not be trusted to any private man, yet Parliaments and the Collective Body should, and may be trusted with it. But to this I have answered formerly, that all Convocations without Authority from the King, and all

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rising against him are indefinitely declared unlawful, and justly, for whoever wants Authority, is but in a private capacity, none having a publick capacity, save the Magistrates. And if they be allow'd to rise, because their quarrel is just, it must be as just to allow a lesser number, if they have the same Justice in their pretents, and we have frequently seen, that the same persons who magnified the multitude for their numbers, did shortly thereafter divide from them, pretending that they were the *Sanctior pars*, or juster Party.

4. This position is against the very Nature, not only of Monarchy, but of all Governments; For who will obey when they may resist? And who can be Judges whether the pretences upon which Arms are taken, be lawful, or not? And therefore since it is unlawful for Subjects to take up even Defensive Arms, until it be found that the King against whom these defensive Arms are taken up be a Tyrant, and an Oppressor: It clearly follows, that these Subjects must first have a power to judge and find that the King has erred, which is to declare the People to be Judges of their King; and we may be soon

soon convinced that this Principle is against the Nature of all Government, if we consider that if it were lawful for Subjects with us to rise against the King, it should be lawful for these in a Common wealth, or *Aristocracy*, to rise against their Governors; since these may erre as well as Kings do; and if this were allowed, all Nations should alwayes have one Rebellion rising out of the Ashes of another, for only they who prevail'd should be satisfi'd, and all the rest would certainly conclude that they might more justly oppose these Usurpers, one or more, then the first did oppose their lawful Prince; and thus Government which is design'd for the security of the State, should run in a Circle fixt upon no certain Basis, and determined by no sure Measures.

5. This Principle is dangerous for the Subjects, as well as for the King and other Governors; for if Kings be perswaded that Subjects think this opposition lawful, then they will be still jealous of them, and will be necessitated on all occasions to secure against such oppositions, and so this Doctrine tends more to make our King a Tyrant, than to make us free. And if the difference betwixt King and People, should draw both to Arms, where can we find a Judge, to

whom both Parties will submit? So that to allow this power in the People to debate, is to allow a difference that can never end; and so what innocent man shall be able to know whom he may securely follow? And the best issue that could be expected from these debates, would be, that the one half of the Nation should ruine the other: So comfortable and just is this rebellious Doctrine.

6. If we consult either our own experience, or History, we will find that these pretexts of Liberty, and Religion, have always been used by those who loved neither, and that they have been ordinarily used against the best of Kings, and so prove to be meer Cheats upon their parts who use them, and absolute Villanies, if we consider against whom they are used; and it cannot be otherways, for the worst of men are always readiest to take Arms, and the best of Kings are most inclined to suffer insolence to grow up by degrees to Rebellion: And as few or none ever took up Arms against their King, in whom even the dullest did not see other motives than a love to liberty and Religion, so when they who did take up Arms upon these pretexts, did succeed in their attempts, they became themselves greater grievances to
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the people, than these lawful Powers against whom they pretended to protect them: and when others rose against them upon the same pretexts, they did in the severest manner declare that to be Rebellion in others, which they contended to be lawful in themselves.

7. So dangerous is this Principle, that it has been always us'd as a Tool to promote contrary designs, and to serve the worst of men in all the opposite sides. And thus we see that the Bigot Papists have by it overturn'd Thrones, and disinherited and murdered Kings. In which the most impious of their Doctors have been admir'd and follow'd by the rigid Phanaticks, who did notwithstanding teach, that all Papists were to be extirpated, and unquiet Spirits in the establish'd Republicks of *Rome, Venice,* and *Florence*, have by this Principle endeavour'd to overturn and disquiet as much their own Common-wealths, as our Republicans have impiously endeavour'd to destroy Just Monarchy, thereby to settle an usurping Common-wealth.

8. The only pretext that can justify the rising up in Arms, being, that it is lawful to all Creatures to defend themselves; the pretext must be dangerous, since its limits are uncertain: For how can Defensive Arms
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be distinguished from Offensive Arms? Or, whoever begun at the one, who did not proceed to the other? Or, what Subject did ever think himself secure after he had drawn his Sword against his King, without endeavouring to cut off by it that King against whom he had drawn it? The hope of Absolute Power is too sweet, and the fear of punishment too great, to be bounded, and march'd by the best of Men: And how can we expect this moderation from these who at first wanted patience to bear the lawful Yoke of Government, but because examples convince as much as reason, let us remember how when this Nation was very happy in the Year, 1638. under the Government of a most Pious and Just Prince, born in our own Kingdom, we rais'd an Army, and with it Invaded His Kingdom of *England*, upon the pretext that He was govern'd by wicked Counsellors, and design'd to introduce Popery; and this was justified as a Defensive War, by a long tract of General Assemblies, and Parliaments: and if this be a Defensive War that is justifiable, what King can be secure? Or, where-in shall we seek security against Civil Wars? Or what can be more ridiculous than to pretend the invading Kingdoms, Murthering
 such

such as are Commissionated by the King, after that Invasion, entering into Leagues and Covenants against him, both at home and abroad, the robbing him of his Navies and Militia, and denying him the power to choose his own Counsellors and Judges, are meerly Defensive; but God Almighty, to teach us how dangerous these Defensive Arms are, and how impossible it is to regulate Lawless violence, how gentle and easie soever the first beginnings are, suffered our War, which was so much justified for being meerly Defensive, to end in the absolute overthrow of the Monarchy, and the taking away the life of the best of Kings; and it is very remarkable, that such as have begun with the Doctrine of giving only Passive Obedience in all things, as in refusing to pay just Taxes, to concur in securing Rebels, &c. have from that stepped up to Defensive Arms, and from that to the Power of Reforming by the Sword, and from that to the Power of Dethroning and Murthering Kings by Parliaments, and Judicatures, and from that to the Murthering and Assassinating all who differ'd from them, without any other pretext or formality whatsoever, so hard a thing it is to stop when we begin once to fall from our duty: and so easie a thing it is to persuade

perswade such as have allowed themselves in the first degrees of guilt, to proceed to the highest extravagancies of Villanie.

Oh ! What a blindness there is in Error ? And how palpably doth God desert them, who desert their duty ; suffering them after they have done what they should have abhorred, to proceed to do what they first abhorred really ? To these I must recommend the History of *Hazael*, who, when the Prophet foretold him, *2 King. 8. 12, 13.* That he should *slay their young men with the sword, dash their children, and rip up their women with child*, answered him, *Am I a dog, that I should do such things*; and yet he really did what he had so execrated.

The moderation likewise of these modest pretenders to Self defence, and Defensive Arms, will appear, by the bloody Doctrine of their great *Rabbies*, *Buchanan* not only allows but invites Subjects to Murder their King. And *Lex Rex, Pag. 313.* tells us, that it is a sin against Gods Command to be Passively subject to an unjust Sentence, and that it is an Act of Grace and Virtue to resist the Magistrate violently, when he does him wrong : and after that horrid Civil War was ended, the Author of *Naphtali* doth ju-

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stitue it, pag. 16, and 17. in these words,
 " Combinations for assistance in violent op-
 " position of the Magistrates, when the ends
 " of Government are perverted (which
 " must be referr'd to the discretion of them
 " who minds Insurrection) are necessary by
 " the Law of Nature, of Charity, and in
 " order to Gods Glory, and for violation
 " of this duty of delivering the oppressed
 " from Magistrates, Judgement comes upon
 " People. From which he proceeds, Pag.
 18, and 19. to assert that, " Not only the
 " power of self-defence, but vindicative,
 " and reforming power is in any part of the
 " People, against the whole, and against all
 " Magistrates, and if they use it not, Judg-
 " ment comes on (supposing their capaci-
 " ty probable to bear them forth) and they
 " shall be punish'd for their connivance, and
 " not acting in way of vindication of Crimes,
 " and reforming abuses.

Before I enter upon these Arguments,
 which the Scripture furnishes us with against
 these rebellious Principles; I must crave
 leave to say, that Defensive Arms seem to
 me very clearly inconsistent with that Mor-
 tification, Submission, and Patience, which
 is recommended by our Blessed Saviour,

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in all the strain of the New Testament ;
and how will these people give their Coat
to a Stranger, or hold up their other Cheek
to him, when they will rise even in Rebel-
lion against their Native Prince. 2. As
the taking up of Arms is inconsistent with
the temper requir'd in a Christian ; so it
seems a very unsuitable mean for effectuat-
ing the end, for which it is design'd, since
Religion being a Conviction of what we
owe to God, how can that be command-
ed, which should be perswaded ? And
how can Arms become Arguments ? Or
how can External Force influence immate-
rial Substances, such as are the Souls of
Men. And we may as well think to awake
a mans Conscience by Drums, or to per-
swade his Judgment by Musquets ; and
therefore the Apostle speaks only of Spirit-
ual Arms, in this our Spiritual Warfare,
*The Sword of the Spirit, and the helmet of
salvation, &c.* But good God, how could
the extravagancy of forcing the Magistrate
by Arms, in Defense of Religion, enter
into Mens Heads ? when it is unlawful even
for the Magistrate himself, to force Religi-
on by Arms. And as Subjects should not be
by the King forced to Religion ; so if they
use

use Force against the King, the pretext of Religion, tho specious, should not defend them. And therefore when *the sons of Zebedee desired fire from heaven*, upon these who oppos'd even our Saviour, he told them, that they *knew not what spirit they were of.*

3. It seems very derogatory to the power of Almighty God, that He should need humane assistance, and it is a lessening of the great esteem that we ought to have for the energy, force and reasonableness of the Christian Religion, that it needs to be forc'd upon men by Arms, as if it were not able to force its own way. This Mahomet needed for his Cheats, but our blessed Saviour needs not for his Divine Precepts, and therefore when *Peter* offered to fight for him, our Saviour check't him, commanding him to put up his Sword, and to perswade him the more effectually, he assures him, that *all these who take the Sword, shall perish by it,* and that his *Kingdom was not of this World,* and so he needed no such worldly help, but if he pleas'd to call for legions of Angels, his Omnipotent Father would send them, and sure Angels are fitter and abler Instruments to carry on such a work of Reformation.

mation, than Rebellious Regiments of Horse and Dragoons. Which Divine Argument serves also to refute the Atheistical Doctrine of *Buchannan*, and *Owen*, who would persuade us, that our Saviour did only recommend to his Disciples to flee from one City to another, when they were persecuted, Because they then wanted power to resist. For tho they did want, yet our Saviour could have, by legions of Angels, defeated all the Powers upon Earth: And *Tertullian* in his Apology for the Christians, insists on their patient suffering under Persecution, tho their number were sufficient to have resisted.

4. Our blessed Saviour foreseeing that Mans Corruption would in spite of Christianity, prompt him to resist; he therefore did command by the Apostle *Paul*, *Rom. 13. v. 1*, and 2. *Let every Soul be Subject to the higher Power for there is no power but of God; the powers that be are ordained of God, whosoever therefore resisteth the power, resisteth the ordinance of God: and they that resist shall receive to themselves damnation.* In which Text, it is very remarkable that the Apostle urges this Christian duty of submission, as being a mark of mans immedi-
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at dependance upon God, and as that, which when contemned brings eternal damnation. And whereas it is pretended that this Text commands only submission to Magistrates, whilst they Act Piously, and Vertuously, because only in so far they are Gods Vicegerents, but discharges not resistance to their impious commands. It is answered that the Text has no such limitation, and we must have so much respect to the Scripture, as to think that if God Almighty had design'd to allow such an opposition, he would have warranted it, in as clear Terms, as he commanded the submission, and the reason why this submission is commanded, is not because the power is rightly us'd, but because the power is ordained of God. And we see that St. *Paul* himself did think that the power should be reverenc'd, even when abus'd: for when the high Priest was Injuring him, he acknowledged that he was oblig'd not to speak evil of the Rulers of his People, *Acts* 23. 2. And if this place of Scripture, and the submission therein commanded, were so to be limited, we behov'd likewise so to limit the 5. Commandment, and not to honour our Parents, except when they are Pious, nor to obey them,

them, if they vex or trouble us, and St. Paul having written this Epistle to those, who were then living under that monstrous Emperour *Caius*, did clearly design, that the Christian Religion was to be admired for commanding Subjects, not only to obey good Princes, but even submitting peaceably to Tyrants. And suitable to this Doctrine are these Texts, *Heb. ch. 12. v. 9. We had Fathers of our flesh, who corrected, and chastened us, after their own pleasure, and we gave them reverence; and lest we might think that Text rather a Narration than a Command, it is told us Peter 2. v. 18. Servants be subject to your Masters with all fear, not only to the good and gentle, but also to the froward, for this is thanks-worthy, if a man for conscience toward God do endure grief And v. 20. If when ye do well, and suffer for it, ye take it patiently, this is acceptable to God, for even hereunto were ye called.*

Our blessed Saviours practice, did likewise agree most admirably with his Precepts and Doctrine formerly insisted on, for though no man ever was, or can be so much injur'd as his blessed self, nor could ever any defensive Arms have been so just, as in his quarrel, yet he would not suffer a
Sword

Sword to be drawn in it , and to discourage all Christians from using Arms , he told these who were offering to defend even himself with Arms, *that whosoever should draw the Sword, should perish by it* , and it seems that God Almighty permitted Peter to draw his Sword at that time meerly , that we might upon that occasion be for ever deter'd from defensive Arms , by this our Saviours Divine example and reasoning.

The last Argument I shall adduce, shall be from that most Christian Topick us'd by St. Paul, Rom. 3. 8. *We should not do ill that good may come of it.*

And therefore since disobedience to Magistrats , but much more to Rebel against them, is discharg'd both by the Laws of God and Men : This disobedience and opposition, cannot be justifi'd by pretending that it is design'd for Reforming the Nation. And if it be answer'd, that this opposition is not in it self ill, because the design justifies it. It is to this reply'd, that if this answer be sufficient, then the former excellent Rule is of no use : For when a Servant steals his Masters Money to give to the Poor ; or a Son cuts his Fathers Throat, because he is vitious; or when *Jacques Clement* Stabed

ed *Henry* the 3. and *Ravilleck Henry* the 4. they might have alleadg'd the same in their own defence. Nor know we a surer proof that any thing is impious, or unlawful, then when the Laws of our Nation have discharg'd it as a great Crime, they being against and contrare to no positive Law of God; but rather suitable to the same; and own'd as such by Christian Synods and Divines: and there being no necessity to inforce this going out of the Road. All which holds in this case, nor can it be imagin'd, how Reforming by Arms, can be thought necessary, since God both can without a Miracle, *Turn the hearts of Kings, in whose hands they are, as Rivers of Waters.* And can send devout Men to influence Kingdoms. And should not we rather suffer patiently as the Primitive Christians did, that his Divine Majesty may be by our patience prevail'd upon, to Reform us now, as he did of old our Predecessors from Paganism; by our own Kings, in a Regular way than upon every notion of Bigot and Factious Ring-leaders overturn all Government, and order, Rent all Unity, and involve our native Country in Blood and Confusion. And whilst we are fighting for the Throne of Religion,
lose

lose the true efficacy of Piety, and Devotion; for what use can there be of Patience, Humility, Faith, and Hope. If we will presently repair our selves, submit to no Magistracy that differs from us, and believe that Religion cannot subsist except by us.

The Fathers also of the Primitive Church have inculcated so much this Doctrine every where, both by their Doctrine and Practice, and both these are so fully known, that I shall remit this point to these Learn'd Men who have fully handled it. Only I must remember that excellent passage of St. Ambrose, who being commanded to deliver up his Church to the Arians, says, *Volens nunquam deferam, coactus repugnare non novi; dolere potero, flere potero, gemere potero; adversus arma milites Gothos, Lachryma mea, mea arma sunt, talia enim sunt munimenta sacerdotis; aliter nec debeo nec possum resistere.* Which Prayers and Tears are likewise call'd the only Arms of the Church by the great Nazianz: in his first Oration against Julian, and by St. Bernard in his 221. Epistle. But more of this is to be found, Tom. 2. Concil. Gallia pag. 533. Where it is fully prov'd that all Subjects ought

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hum;

humbly and faithfully to obey the Regal Power, as being ordained by none but God, with whom the wise Heathens agree, for *Marcellus* (*Tacit. lib. 4. hist.*) pray'd for good Princes, but obey'd bad ones; and *Plinij* in his *Panegirick* to *Trojan*, confesses that the gods had bestow'd on the Emperor the sole disposal of all things leaving nothing to Subjects, save the honour of obedience. But because these of that perswasion will believe better *Calvin* than the Fathers, I have taken pains to consider in him these few passages, *cap. 20. lib. 4. Institut. §. 27. Assumptum in Regiam Maj statem violare nefas est nunquam nobis seditiose ista cogitationes in mentem veniant tractandum; esse pro meritis Regem, §. 29. Personam sustinent voluntate Domini, cui inviolabile in Majestatem ipso impressit, & insculpsit, §. 31. Privatis hominibus nullum aliud quam parendi, & patiendi datum est mandatum.* And all this Chapter doth so learnedly and judiciously impugn this Doctrine, that it is a wonder why *Calvinists* should differ from *Calvin*.

The Examples adduced by our Republicans, of the revolt of *Libna*, 2 *Chron. I. 21.* And from *Feroboam*, because he had forsak-

taken the Lord God of his Fathers, and of the Ten Tribes from *Rehoboam*, because of *Rehoboam* his oppression, 1 *King*. 12. prove not all the lawfulness of the Subjects defection from their Kings, because these defections are only narrated, but not allow'd in Scripture, and are recorded rather as instances of Gods vengeance upon the wickedness of these Princes, than as examples justified in these Revolters, and to be follow'd by such as read the Sacred History: In which, when Examples are propos'd by the Spirit of God for our imitation, they are still honour'd with the Divine approbation. And I hope my Readers will still remember, that I design not by this Treatise to encourage Princes to wickedness by Impunity, but only to discourage Subjects from daring to be the punishers.

The great esteem which the great Bishop *Usher* has justly, even among Republicans, and Phanatics, for Learning and Devotion, has prevail'd with me, to set down two Objections used by him, with his pious Answers thereto. The first is, " Suppose (say they) the King, or Civil Magistrate should command us to Worship the Devil, would you wish us here to lay down our Heads

upon the Block, and not to repel the violence of such a Miscreant, to the outmost of our power: And if not, what would become of Gods Church, and his Religion. To which the Holy Man Answers, That even when the Worship of the Devil was commanded by the cruel Edicts of persecuting Emperours, the Christians never took up Arms against them, but used fervent Prayers, as their only refuge: And St. Peter animates them to this patient suffering, 1 Pet. 4. 12, 13. *Beloved, think it not strange concerning the fiery trial, but rejoice in as much as ye are partakers of Christs sufferings. But let none of you suffer as a murderer, or a thief, or as an evil-doer, or as a busy-body in other mens matters.* By which last words, if I durst add to so great an Author as B. *Usher*, the Apostle seems expressly to me to have obviated the dreadful Doctrine of rising in Arms upon the pretext of Religion, and the killing such as differ from them; which if the Christians did allow, they behov'd to pass for Murderers, and to discharge them to meddle in matters of Government upon this pretext; because then they behov'd to suffer justly, as busy bodies. And here B. *Usher* does most appo-
fitly

figly cite St. *Augustine*, in *Psal . 149.*
The World rag'd, the Lion lifted himself up
against the Lamb, but the Lamb was full
stronger than the Lion: The Lion was over-
come by shewing cruelty, the Lamb did over-
come by suffering. And St. *Jerome*, *Epist.*
 62. " By thedding of blood, and by suf-
 "fering, rather then doing injuries, was
 "the Church of Christ at first founded,
 "it grew by Persecutions, and was crown-
 "ed by Martyrdoms.

The second Objection is, If mens hands
 be thus ty'd, no mans estate can be secure;
 nay, the whole frame of the Common-wealth
 would be indanger to be subverted, and ut-
 terly ruin'd. To which he answers, that the
 ground of this Objection is exceeding faulty,
 and inconsistent with the Rules of Huma-
 nity, and Divinity; of Humanity, because
 this would impower privat persons to Judge,
 and so should confound all Order, and in-
 vite all men to oppose Authority, and make
 Subjects Accusers, Judges, and Executio-
 ners too; and that in their own Cause, a-
 gainst their own Sovereign, and against Di-
 vinity, because it is contrary to the Scrip-
 tures, and Fathers, who command Submis-
 sion, Humility, and Patience. *Rex est sē*

nocentem punit, cede iustitia, si innocentem, cede fortuna, Seneca de Jura. lib. 2. cap. 30. If the King punish thee, when thou art guilty, submit to Justice: If when thou art innocent, submit to Fortune. And if a Heathen could be induced by his vertue to submit to blind Fortune, how much more ought a Christian to be prevail'd upon by Devotion to submit to the All-seeing Providence of the most wise God, who *maketh all things to work joyntly for good to them that love him.* And as St. *Augustine* piously adviseth, Princes are to be suffered by their People, that in the exercise of their patience, temporal things may be born, and eternal hop'd for.

The instance of King *James* the Third being punished by his Subjects, is so far from being an Argument able to justify Subjects rising in Arms against their King, that this part of our History should for ever convince all honest men of the dangers that attend Defensive Arms: For this excellent Prince was so far from being one of these Tyrants, against whom Defensive Arms are only confest to be just, that few Princes were more meek and careful of his Subjects. But because he employ'd such as him-
self

self had rais'd, finding that the Nobility had too often been insolent Servants to their Prince, and severe Task-masters to the People; the Nobility thinking more upon this imaginary neglect, than their own duty, did from Combinations proceed to Arms, and rejecting all conditions of peace, they were at last curs'd with a Victory, in which this Gentle Prince was murdered, whilst he sought to save his Sacred life in a deserted Miln. By which we may see that these Defensive Arms so much hallowed in our late Debates, are but the Militia of Pride, Vanity, and Ambition, and that if they be allow'd, the best of Princes will ever fall by them.

And as to the *Act 14. Par. 4. Ja. 4.* Whereby it is pretended that the opposing, and even the killing *K. Ja. the 3.* in Battle is justified, and which Act was never repelled. It is answered, *First*, That this Statute was made by the same Rebels who had opposed their lawful Prince, and so was rather a continuing of their Rebellion, than a justification of it. 2. That abominable Statute proceeds on the Precept of *K. Ja. the 3.* calling in the *English*, and designing to enslave the Kingdom to Forrainers, which

which was not prov'd as it ought to have been, though the pretext had been legal, as it was neither legal nor true in the least circumstance, and the Noblemen and Barons are Condemn'd, without being Cited or heard; though the Act be not a Statute but a Verdict, so unjust are all Rebels, who are forc'd to maintain one Crime by another. 3. In the new Collection of our Statutes made by *K Ken.* and Authoriz'd in many subsequent Parliaments. The Dreadful and Treasonable Act is not insert, which was the best way to Rescind it, because it was, though a reproach to the Nation to have any formal Law made to Rescind the Statute, which behov'd to preserve its memory in annulling its Authority. 4. Many Statutes since that time are made, declaring the rising in Arms against the King and his Authority, upon any pretext whatsoever to be Treason; and expressly Rescinding all Acts and Statutes to the contrary, as Rebellious and Treasonable, and there needed no more Positive Statutes to Rescind that Rebellious and Treasonable Combination rather than Law.

As to the 44. *Act* 6. *Par.* 74. 2, From which

which its urged, that because that ~~no~~ declares it Treason to Assault Castles, and Places where the Kings Person shall happen to be, without the Consent of the three Estates : And that it is therefore lawful to Assault the same with the Consent of the three Estates, and consequently to rise in Arms with the Consent of the three Estates is no Treason. It is answered, that it being but too ordinary in the Minority of our Kings to have great Factions amongst the Nobility (which shews also the danger of placing the Supream Power in the *Præceres Regni*) one of the Factions ordinarily either having made the young King Prisoner, or using to Assault the Castle where he was really preserved. It was therefore most wisely declared by this Statute, *That to lay hands upon the Kings Person violently, what age the King be of, young or auld, or to Assault Castles, or Places where the Kings person shall happen to be, without the Consent of the three Estates, shall be punished as Treason.* That is to say, that so great respect was to be had to his sacred Person, that no violence was to be offered to the Place where he was, untill the same was allowed by the three Estates.

mer Laws, as well as those made in our age, it is still declared Treason to Rebel against the Kings Person, or to refuse to assist him without adding, except the same be done by the three Estates, which shews that there's nothing design'd in this Act in favours of their Authority; and that this King was Minor the time of this Act; and that he had great Troubles in his Youth, is very clear from the short characters given of our Kings, by *Skeen*, in the end of our Acts of Parliament.

It will (I hope) easily appear by the ballance of these Arguments, that at least the Municipal Laws of our Nation, which punish defensive Arms as Treason, should be obey'd by our Countrey-men, since, as I have oft inculcated the Laws of any Nation should still be obey'd, except where they are inconsistent with the Word of God, and the most that the most violent Republicans alive can say upon this Subject, is, that the case may be debated by probable Arguments, and that neither of the Positions want their inconveniencies, so that in this, as in all other Debates, the Law of each Nation is the best Judge to decide such Controversies, and therefore such as maintain these Principles, after so many

many positive and reiterated Laws, are obliged for preserving the Peace of humane Society, and the Order which God has establisht, to remove from places where they cannot obey, for they will alwayes find some place where the Government will please them, and better they be disquieted, than the Government of the whole World should be disturb'd, but if they will stay, and oppose the Government, it must be excus'd, to Execute those who would destroy it.

Having thus glanc'd only at Answers to these Objections, because I think the Objections rather shining than strong, I shall sum up this Debate with these Reflections, *First, Buchanan*, and our Republican Authors, Debate all these Grounds, as if we were yet to Form the Government, under which we were to live, whereas we live under, and are sworn to a Monarchy, fixt by Law and Consent, time out of mind, and the Levellers may as well urge that no Nobleman should be Dignifi'd, nor no Gentleman Enrich'd above, a man of good sense, and Tennents may argue that it is not reasonable, that they bearing Gods Image as well as the Master, should toile to feed their Lusts. thus Reason may be distort-

ed; and we call that Reason and Providence, which pleases us best.

2. Most of their Citations and Authorities, are the Sentiments of these Greeks, and Romans, who liv'd under Commonwealths, and so magnifi'd their Countrey in opposition to Usurpers, whereas our King is the Father of our Countrey, and whatever they said of their Countrey, we should say of him, and therefore these Citations concerns us no more than the Law of England binds *Scotsmen*, they praise their own Children and Servants, for their Faithfulness and Obedience to them, and yet they rail at us for being Faithful to our great Master, and chief Parent under God.

3. Most of the Authors cited and admir'd by them, are Heathens, particularly *Stoicks*, who equal'd themselves not only to Kings, but to their own Gods, and against whose selfishness and pride, all Christians have justly exclaim'd, and so they are not competent Judges, nor sure Guides to Christians, in the exercise of those purely Christian Vertues of Humility, Submission, Self-denial, Patience, Faith, and Relyance upon God.

4. They ballance not all the Conveniencies and Inconveniencies of either Government.

vernment, but magnifie the one and conceal the other; and thus it is true that Kings may be Tyrants, but so may, and usually are the Leaders of the Rabble: *Cromwel* was such, and *Shaftsbury* had been such, he was such in his Nature, and had been such in his Government; and the Distractions of a Civil War, which ordinarily attend Competitions amongst Republicans, Destroy moethan the Lusts of any one Tyrant can do, which made *Lucan* conclude, after a sad review of the continued Civil Wars, betwixt *Scilla* and *Marcus*, *Cesar* and *Pompeij*, without considering what followed under the *Trium viri*.

Falices Arabes, Medique Eoaque tellus,

Qui s. b perpetuis tenuerunt Regna Tyrannii.

5. These who debate against Magistracy, gratifie their own Vanity and Insolence; but such devout men as *Ambrose*, *Augustine*, *Usher* and others, Debate against the Dictats of Interest, as well as Passion; which two, nothing save Grace can overcome, and there can be no surer mark of Conviction than to recide against these.

Lastly, even *Buchannan* repented this horrid Doctrine, *Cambden*, 10. year of Queen *Elizabeths* Reign, in 1567.

But forasmuch as *Buchannan* being transported with partial affection, and with Mur-

rays

rays bounty, wrot in such sort that his said Books have been condemned of falsehood, by the Estates of the Realm of *Scotland*, to whose Credite more is to be Atributed, and he himself sighing and sorrowing, sundry times blam'd himself (as I have heard) before the King, to whom he was School-master, for that he had employ'd so virulent a Pen against that well deserving Queen, and upon his Death-bed wished that he might live so long, till by recalling the truth, he might even with his Blood, wipe away these Aspersions, which he had by his bad Tongue falsely laid upon her, but that (as he said) it would now be in vain; when he might seem to dote for Age, &c.

Idem, Anno 1582.

And not content with all this (speaking of their surprizing the King) they Compell'd the King against his Will, to approve of this intercepting of him by his Letters to the Queen of *England*, and to Decree an Assembly of the Estates, Summoned by them to be just, yet could they not enduce *Buchanan* to approve of this their Fact, either by writing, or perswasion by Message, who now sorrowfully lamented, that he had already undertaken the Cause of Factionous people against their Princes, and soon after Died, &c.

The

THAT THE
Lawful Successor

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From Succeeding to the

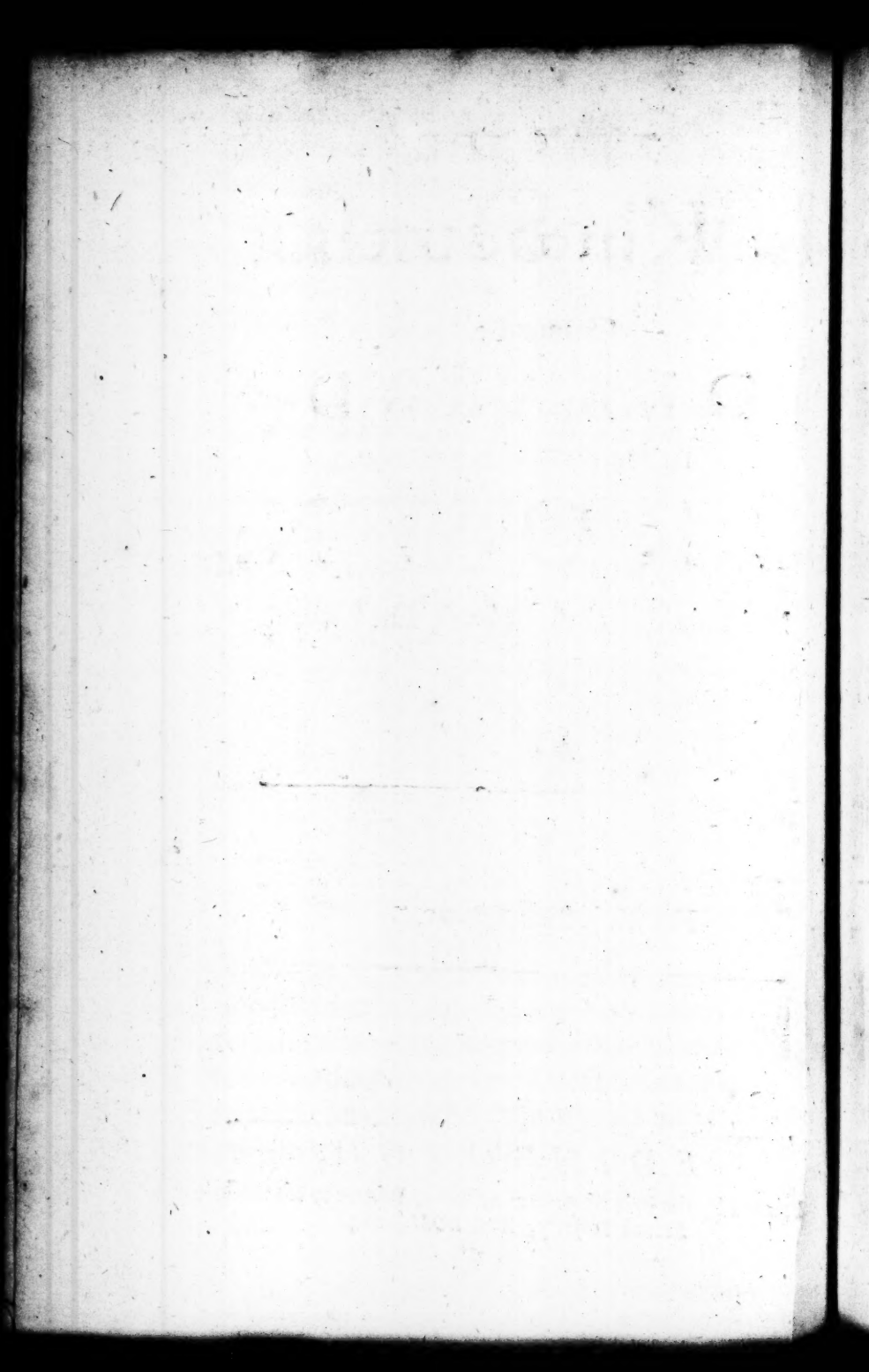
CROWN:

Maintain'd against *Dolman, Buchannan,*
and others.

BY
Sir GEORGE MACKENZIE
His Majesties Advocat.

EDINBURGH,

Printed by the Heir of *Andrew Anderson*, Printer to His most
Sacred Majesty, *Anno DOM. 1684.*



()

King James

In His Advice to

Prince Henry.

Page 173.

IF God give you not Succession, Defraud never the nearest by Right, whatsoever conceit ye have of the Person; for Kingdoms are ever at Gods Disposition, and in that Case we are but Liferenters, it lying no more in the Kings, than in the Peoples Hands to Dispossess the Righteous Heir.

Page 209. *Ibid.*

FOr at the very moment of the Expiring of the King Reigning, the nearest and Lawful Heir entereth in his place; and so to refuse him, or intrude another, is not to hold out the Successor from coming in, but to expel and put out their Righteous King:

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King : and I trust at this time whole
France acknowledgeth the Rebellion of
the Leaguers, who upon pretence of He-
resie by force of Arms, held so long out,
to the great Desolation of their whole
Countrey , their Native and Righteous
King from possessing his own Crown and
natural Kingdom.

E R R A T A.

Page 5. delet at his Majority. Page
33. for *Richard* 3d. Read 2d.

The

The Right of the Succession Defended.

THe fourth Conclusion to be cleared was, that neither the People, nor Parliaments of this Kingdom, could seclude the lineall Successor, or could raise to the throne any other of the same Royal line.

For clearing whereof, I shall according to my former method, first clear what is our positive Law in this case; Secondly I shall shew that this our Law is founded upon excellent reason, and lastly, I shall answer the objections.

As to the first. It is by the second Act of our last Parliament acknowledged, That „the Kings of this realme deriving their „Royal power from God Almighty alone, „do lineally succeed therto, according to „the known degrees of proximitie in blood, „which cannot be interrupted, suspended „or diverted by any Act or Statut whatsoever, and that none can attempt to alter „or divert the said Succession, without involving the subjects of this Kingdom in „Perjury and Rebellion, and without exposing them to all the fatal and dreadful „consequences of a civil warr, DO THEREFORE from a hearty and sincere sense of „their duty Recognize, acknowledge and „declare that the right to the Imperial „Crown of this realme, is by the inherent

A

right

„ right and the nature of Monarchy, as well as
 „ by the fundamental and unalterable laws of
 „ this realme, transmitted and devolved by a
 „ lineal Succession, according to the proxi-
 „ mity of blood. And that upon the death
 „ of the King or Queen, who actually reignes,
 „ the Subjects of this Kingdom are bound by
 „ Law, duty and alledgance to obey the
 „ next immediat and Lawful Heir either male
 „ or female, upon whom the right and admi-
 „ nistration of the Government is imme-
 „ diately devolved. And that no difference in
 „ Religion, nor no Law nor Act of Parliament
 „ made, or to be made, can alter or divert the
 „ right of Succession and lineal descent of the
 „ Crown to the nearest and Lawful Heirs,
 „ according to the degrees forefaids; nor can
 „ stop or hinder them in the full, free and
 „ actuall administration of the Government
 „ according to the Laws of the Kingdom.
 „ LIKE AS OUR SOVERAIGNE LORD, with
 „ advice and consent of the saids Estates of
 „ Parliament, Do declare it is high treason
 „ in any of the Subjects of this Kingdom,
 „ by writing, speaking, or any other manner of
 „ way to endeavour the alteration, suspension
 „ or diversion of the said right of Succession,
 „ or the debarring the next Lawfull Successor
 „ from the immediat, actual, full and free
 „ admi-

„administration of the Government, conform to the Laws of the Kingdom. And
 „that all such attempts or designs shall inferre against them the paine of treason.

This being not only ane Act of Parliament, declaring all such as shall endeavour to alter the Succession, to be punishable, as Traitors; but containing in it a Decision of this Point by the Parliament, as the Supream Judges of the nation, and ane acknowledgement by them, as the representatives of the people, and nation. There can be no place for questioning a point, which they have plac'd beyond all contraverſie: especially ſeing it paſt ſo unanimoſly that there was not on-ly no vote given but even no argument propo-nd againſt it. And the only doubt mov'd about it was, whither any Act of Parliament, or acknowledgement, was neceſſary, in a point which was in it ſelf ſo uncontraver-ted. And which all who were not deſperat fa-naticks, did conclude to be ſo in this nation, even after they had hear'd all the arguments that were uſ'd, and the Pamphlets that were written againſt it, in our neighbour-Kingdom.

But becauſe ſo much noiſe has been made about this queſtion, and that blind bigotry leads ſome, and humorous faction drawes others out of the common road. I conceive it

will be fit to remember my reader of these following reasons, which will I hope clear that as this is our present positive Law, so it is established upon the fundamental constitution of our Government, upon our old Laws, upon the Laws of God, of Nature, of Nations, and particularly of the Civil Law.

As to the fundamental constitution of our Government, I did formerly remark, that our Historians tell us, that the *Scots* did swear alledgeance to FERGUS, who was the first of our Kings, and to his Heirs. And that they should never obey any other, but his Royal Race. Which Oath does in Law, and reason, bind them to obey the lineal Successor, according to the proximity of Blood. For an indefinite obligation to obey the blood Royal, must be interpreted according to the proximity in Blood, except the swearers had reserv'd to themselves a power to choose any of the Royal Familie, whom they pleas'd, which is so true, that in Law, an obligation granted to any man, does in the construction of Law accresce to his Heirs, though they be not exprest. *Qui sibi providet, & heredibus providet.* And *Boethius* tells us that after King FERGUS's death, the *Scots* finding their new Kingdom infested with warrs, under the powerful influence of *Picts*,
Ro-

Romans, and *Britans*, they refus'd notwithstanding to preferre the next of the Royal Race, who was of perfect age, and a man of great merit, to the Son of King FERGUS, though an infant; which certainly in reason they would have done, if they had not been ty'd to the lineal Successor. But lest the Kingdom should be prejudg'd during the minority, they enacted, that for the future, the next of the Blood Royal should alwayes in the minority of our Kings administrat as Kings, till the true Heir were of perfect age. But this does not prove, as *Buchanman* pretends, that the people had power to advance to the Throne, any of the Royal Race: whom they judg'd most fit, for common sense may tell us, that was not to choose a King, but a Vice-Roy, or a Regent. For, though to give him the more authority, and so to enable him the more to curb factions, and oppose enemies, he was called King, yet he was but *Rex fidei Commissarius*, being oblig'd to restore it to the true Heir at his majority: and so Governed only in his Vice, and consequently was only his Vice-roy.

But because the Uncles, and next Heirs being once admitted to this *fidei Commissarie* title, were unwilling to restore the Crown to their Nephews, and sometimes murder'd

them: and oftentimes rais'd factions against them. Therefore the People abhorring these impieties, and weary of the distractions, and divisions, which they occasion'd, beg'd from King KENNETH the second, that these following Laws might be made.

1. That upon the Kings death the next Heir of whatsoever age should succeed.

2. The Grand-childe either by Son or Daughter should be preferr'd.

3. That till the King arriv'd at 14 years of age, some Wise-man should be choos'd to Govern, after which, the King should enter to the free administration, and according to this constitution, some fit Person has still been choos'd Regent in the Kings minority, without respect to the proximity of Blood, and our Kings have been oftentimes Crown'd in the Cradle.

In conformity also to these principles, all the acknowledgements made to our Kings, run still in favours of the King, and his Heirs. As in the first Act Parl. 18. JAMES VI. and the II, III, IV. Acts Parl. I. CHARLES II. And by our Oath of Alledgeance, we are bound to bear faithful and true alledgeance to his *Majesty*, his Heirs and Lawful Successors; which word **LAWFUL**, is insert, to cutt off the pretexts of such as should not suc-

succeed by Law, and the insolent arbitrariness of such, as being but subjects themselves, think they may choose their King. *viz.* Act 1. Parl. 21. JAMES 6.

That this right of Succession according to the proximity of blood, is founded on the Law of God, is clear by *Num.* „Chap. 27. v. 9. and 10. If a man hath no „Son or Daughter, his inheritance shall „descend upon his Brother, by *Num.* 36. Where, God himself decides in favours of the Daughters of *Zelophehad*, telling us, it was a just thing, they should have the inheritance of their father. And ordaines, that if there were no Daughters, the estate should go to the Brothers. Saint *Paul* likewise concludes *Rom.* 8. If Sons, then Heirs, looking upon that, as a necessary consequence; which if it do not necessarily hold, or can be any way disappointed, all his divine reasoning in that Chapter falls to nothing. And thus *Ahaziah* 2 *Chron.* 22. v. 1. was made King (though the youngest) in his Fathers stead; because sayes the text, „the *Arabians* had slain all the eldest: which clearly shews that by the Law of God, he could not have succeeded, if the eldest had been alive. We hear likewise in Scripture, „God oft telling, *By me Kings reigne.*

And when he gives a Kingdom to any as to *Abraham, David, &c.* He gives it to them and their posterity.

That this right of Succession flowes from the Law of nature, is clear; because, that is accounted to flow from the Law of nature, which every man finds grafted in his own heart, and which is obey'd without any other Law, and for which men neither seek nor can give another distinct reason; all which hold in this case: for who doubts when he heares of ane hereditary Monarchy, but that, the next in blood must Succeed; and for which we need no positive Law, nor does any man enquire for a further reason, being satisfied therein by the principles of his own heart. And from this ground it is, that though a remoter Kinsman did possess as Heir, he could by no length of time prescribe a valide right; since no man, as Lawyers conclude, can prescribe a right against the Law of nature: and that this principle is founded thereupon is confest *l. cum ratio naturalis ff. de bonis damnat: cum ratio naturalis, quasi lex quedam tacita, liberis parentum hereditatem adjecerit, veluti ad debitam successionem eos vocando: propter quod suorum heredum nomen eis indultum est; adeo ut ne a parentibus*
„quidem

„quidem, ab eâ successione amoveri possint.
 „Et §. emancipati Institut: de hæred: quæ
 „ab intest. Prætor naturalem æquitatem
 „sequutus, iis etiã bonorum possessionem
 „contra 12 tabularum leges, & contra jus
 „civile permittit. Which text shewes like-
 „wayes, that this right of nature was stron-
 „ger than the Laws of the 12 Tables, though
 these were the most ancient and chief Sta-
 tutes of Rome. Which principle is very clear
 likewayes from the Parable, Math. 21.
 Where the Husband-men who can be pre-
 sum'd to understand nothing but the Law of
 nature, are brought in saying, this is the
 „Heir, let us kill him and seaze on his inheri-
 „tance. Nor does this hold only in the Suc-
 cession of Children or the direct line, but in
 the collateral Succession of Brothers and
 „others *L. hac parte ff. unde cognati. Hac*
 „*parte proconsul Naturali æquitate motus,*
 „*omnibus cognatis permittit bonorum posses-*
 „*sionem quos sanguinis ratio Vocat ad hære-*
 „*ditatem. Vid. l. 1. ff. de grad. § l. 1. §. hoc*
 „*autem ff. de bonor. possess.* And these who are
 now Brothers to the present King, have been
 Sones to the former: and therefore what-
 ever has been said for Sones, is also verified
 in Brothers. As for instance, though his
 Royal Highness be only Brother to King

CHARLES the II., yet he is Son to King CHARLES I. and therefore, as Saint Paul sayes, if a Son, then ane Heir, except he be secluded by the existence and Succession of ane elder Brother.

That this gradual Succession is founded on the Law of nations, is as clear by the Laws of the 12 Tables, and the Prætorian Law of *Rome*. And if we consider the Monarchy either old or new, we will find, that wherever the Monarchy was not elective, the degrees of succession were there exactly observed. And *Bodinus* de Republ. lib. 6 Cap. 5. „asserts, that, *Ordo non tantum nature* & „*divine sed etiam omnium ubique gentium* „*hoc postulat*. From all which, Pope *Innocent* in c. grand. de supplend. neglig. præ. „*lati* concludes, *In regnis hæreditariis ca-* „*veri non potest ne filius aut frater succedat*. And since it is expressly determined, that the right of blood can be taken away by no positive Law or Statute *L. Jura Sanguinis ff. de Reg. jur. § L. 4. ff. de suis legitim.* and that the power of making a Testament, can be taken away by no Law *L. ita legatum ff. de conditionibus*. I cannot see how the right of Succession can be taken away by a Statute; for that is the same with the right of Blood,

and

and is more strongly founded upon the Law of nature, than the power of making Testaments.

Since then this right is founded upon the Law of God, of nature and of nations, it does clearly follow, that no Parliament can alter the same by their municipal Statutes, as our Act of Parliament has justly observed.

For clearing whereof, it is fit to consider, that in all powers and jurisdictions which are subordinat to one another, the Inferiour should obey, but not alter the power to which it is subordinat; and what it does contrary thereto, is null and void. And thus, if the judges of *England* should publish edicts contrare to Acts of Parliament, or if a Justice of Peace should ranverse a decree of the judges of *West-minster*, these their endeavours would be void and ineffectual. But so it is, that by the same principle, but in ane infinitely more transcendent way, all Kings and Parliaments are subordinat to the Laws of God, the Laws of Nature, and the Laws of Nations: And therefore no Act of Parliameht can be binding, to overturn what these have established.

This, as to the Law of God, is clear, not only from the general dictats of Religion,

gion, but 28 *Hen. 8. cap. 7.* the Parliament
 „ uses these words, For no man can dispence
 „ with Gods Laws; which we also affirme and
 „ think. And as to the Laws of nature, they
 must be acknowledged to be immutable, from
 the principles of reason. And the Law it
 „ self confesses that *naturalia quædam jura*
 „ *quæ apud omnes gentes per æquè observan-*
 „ *tur, divina quadam providentia constitu-*
 „ *ta semper firma, atque immutabilia per-*
 „ *manent* §. *sed naturalia Institut. de Jur.*
Natural. §. singulorum de rer. divis:
 And when the Law declares, that a Supream
 Prince is free from the obligation of Laws,
Solutus legibus, which is the highest power
 that a Parliament can pretend to, or arrive
 at; Yet Lawyers still acknowledge that
 this does not exeem these Supream powers
 from being lyable to the Laws of God, na-
 ture and nations, *Accurs: in l. Princeps ff.*
de Leg. Clementina pastoralis de re judi-
catâ Bart. in l. ut vim de justitiâ & jure
Voet. de Statutis Sect. 5. Cap. 1. nor can
 the Law of nations be overturned by private
 Statutes, or any Supream power. And thus
 all Statuts to the prejudice of Ambassadors,
 who are secured by the Law of nations,
 are confess'd by all to be null, and the highest
 power whatsoever cannot take off the ne-
 cessity

cessity of denouncing warr before a warr can be Lawful. And Lawyers observe verie well, that these who would oppose the common dictats of mankind, should be look't upon as enemies to all mankind.

My second argument shall be, that the King & Parliament can have no more power in Parliament than any absolute Monarch has in his own Kingdom: for, they are when joyn'd, but in place of the Supream power, sitting in judgement; and therefore they cannot in Law do what any other Supream and absolute Monarch cannot do. For all the power of Parliaments consists only in their consent, but we must not think, that our Parliaments have ane unlimited power *de jure*, so, as that they may forfeit or kill without a cause or decerne against the Subjects without citing or hearing them; or, that they can alienat any part of the Kingdom; or Subject the wholl Kingdom to France or any other Forraigne Prince: all which deeds would be null in themselves, and would not hinder the partie injur'd from a due redress. For if our Parliaments had such power, we would be the greatest slaves, and live under the most arbitrary Government imaginable. But so it is, that no Monarch whosoever can take from any man what is due

due to him, by the Law of God, nature, and nations. For being himself inferiour to these he cannot overturne their statuts. Thus a Prince cannot even *ex plenitudine potestatis legitimat* a Bastard in prejudice of former children though they have only but a hope of Succession l. 4. & *sequen. de natal. restituend.* and for the same reason, it is declared in the same Law, that he cannot restore a free'd man (*restituere libertum natalibus*) in prejudice of his Patron, who was to succeed, though that succession was but by a municipal Law. For clearing which question, It is fit to know that the solid lawyers who treat *jus publicum*, as ARNISEUS and others, do distinguish betwixt such Kingdoms, as were at first conferr'd by the People, and wherein the Kings succeed by contract, and in these, the Laws made by King and People can exclude, or bind the Successor. And yet even here, they confess, that this proceeds not, because the Predecessor can bind the Successor, but because the People renew the paction with the succeeding King. But where the Successor is to succeed *ex jure regni*, in hereditary Monarchies, there they assert positively that the Predecessor cannot prejudice the Successors right of Succession. Which they prove by two ar-

arguments. First, that the Predecessor has no more power, nor right, than the Successor: for the same right, that the present King has to the possession, the next in Blood has to the Succession. And all our Laws run in favours of the King, and his Heirs, and no man can tye his equal, or give him the Law, *par in parem non habet dominium*. The second is, that it were unjust and unequitable that the Predecessor should robbe his Successor *nulla ergo* (sayes *Arniseus Cap. 7. Num. 5.*) *clausula Successori jus auferri potest, modo succedat ille ex jure regni*. And *Hottoman: lib. 2. de Regno Galliae* asserts, that in *France* which is a very absolute Monarchy, *Ea quæ jure Regio primogenito competunt, ne Testamentis, to quidem patris adimi possunt*. And thus when the King of *France* design'd to break the Salique Law of Succession, as in the Reigne of CHARLES the V. It was found impracticable by the three Estates, and when *Pyrhus* was to preferre his youngest Son to the Crown, the *Epirots* following the Law of Nations, and their own, refus'd him, *Paus. lib. 1.* In the year 1649. Also *Amurat* the grand *Seignior*, having left the *Turkish* Empire to *Han* the *Tartarian*, passing by his Brother *Ibrahim*, the wholl Officers of that State, did unanimously Cancel that

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Testament, and restore *Ibrahim*; the true Heir tho a silly foole.

Which shewes the opinion not only of Lawyers but of whole nations and Parliaments; „ Tho *vander Graaff*, an *Hollander* confesses, that it is not Lawfull to choose any of „ his Sons to succeed him, in which, the general quiet of the Kingdom is much concerned. „ And therefore, tho the next Heir were wiser, „ braver, and more generally beloved; Yet the „ more immediat must be received, as choos'd „ by God, whither good or bad, and as honoured with his Character. And if Kings could have inverted their Succession, and choos'd their own Successor Saint *Lewis* had preferred his own third Son to *Lewis* his eldest, and *Alfonfus* King of *Leon* in *Spaine*, had preferred his Daughters to *Ferdinand* his eldest Son. And *Edward* the VI. of *England* had preferred, and did actually preferre the Lady *Iean Gray* to his Sisters *Mary*, and *Elizabeth*. And if Successions especially of such great importance, had not been fixed by immutable Laws of God, and nature, the various and unconstant inclinations of the present Governours, especially when shaken by the importunity of Step-mothers and Mothers, or clouded by the jealousy of flatterers, or favourits, had made the Nations whom they

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Governed, very unhappy: and therefore, God did very justly, and wisely settle this Succession, that both King and People might know, that it is by him that Kings Reigne, and Kingdoms are secur'd in Peace against faction. and it were strange, that this should not hold in Kings, since even amongst subjects the Honour and Nobility that is bestow'd upon a Man and his Heirs, does so necessarily descend upon those Heirs, that the Father, or Predicessor cannot seclude the next Successor, or derogat from his right, either by renouncing, resigning, following base or mean Trades, or any other: For say those Lawyers, since he derives this right from his old Progenitors, and owes it not to his Father, his Fathers deed should not prejudge him therein. *Fab. Cod. 9. Tit. 28. Def. 1. Warnee. Consil. 20. Num. 7.* And as yet the Estates of Parliament in both Nations have no legislative power, otherwayes than by assenting to what the King does; so that if the King cannot himself make a Successor, neither can they by consenting: and all that their consent could imply wold only be that, they and their Successors should not oppose his nomination, because of their consent. But that can never amount to a power of transferring the Monarchy from one branch

to another, which would require, that the Transferrers, or bestowers had the Supream power Originally in themselves, *nemo enim plus juris in alium transferre potest quam ipse in se habet.* And if the States of Parliament had this power Originally in themselves to bestow, why might they not reserve it to themselves? And so perpetuate the Government in their own hands: And this mov'd judge *Jenkins* in his treatise concerning the liberty and freedom of the subject, *pag. 25.* To say, that *no King can be Named, or in any time made in this Kingdom, by the People. A Parliament never made a King, for there were Kings before there were Parliaments, and Parliaments are summoned by the Kings writtes.*

Fourthly, A King cannot in Law alienat his Crown, as is undenyable in the opinion of all Lawyers, and if he do, that deed is voyd and null, nor could he in Law consent to an Act of Parliament declaring that he should be the last King. And if such consents and Acts had been sufficient to bind Successors, many silly Kings in several parts of *Europe* had long since been prevail'd upon, to alter their Monarchy from *Hereditarie* to *Elective*; or to turn it in a Common-wealth; and therefore by the same reason, they cannot consent,

sent to exclude the true Successor : For if they may exclude one they may exclude all.

5. In all Societies and Governments, but especially where there is any association of powers, as in our Parliaments, there are certain fundamentals, which like the Noble parts in the Body are absolutely necessary for its preservation; for without these, there would be no Ballance, or certainty. And thus with us, if the King and each of the Estates of Parliament had not distinct and known limits (sett by the gracious concessions of our Monarchs) each of them would be ready to invade one anothers Priviledges. And thus I conceive that if the Parliament should consent to alienate the half of the Kingdom, or to subject the whole to a Stranger, as in King *Johns* case in *England*, and the *Baliols* in *Scotland*, it has been found by the respective Parliaments of both Kingdoms, that, that Statute would not oblige the Successor. Or if the House of commons in *England*, or the Burrowes of *Scotland* should consent to any Act excluding their Estate and representatives from the Parliament, doubtlesse that Statute excluding them would not prejudice their Successors; because that Act was contrare to one of the fundamental Laws of the Nation. And

the late Acts of Parliaments excluding Bishops, were reprobated by the ensuing Parliaments, as such; and therefore by the same rule, any Statute made excluding the legal Successor, would be null and voyd, as contrare to one of the great Fundamental Rights of the Nation. And what can be call'd more a Fundamental Right than the Succession of our Monarchy? Since our Monarchy in this *Isle*, has ever been acknowledg'd to be hereditary. And that this acknowledgment is the great *Basis* whereupon most of all the positions of our Law run, and are established: such as, that the King never dyes, since the very moment in which the last King dyes, the next Successor in Blood is Legally King, and that without any expresse recognizance from the People, and all that oppose him are Rebels, His Commissions are valide, He may call Parliaments, dispose the Lands pertaining to the Crown, all men are lyable to do him homage; and hold their Rights of him and his Heirs. And generally this principle runs through all the veins of our Law. It is that, which gives life and Authority to our Statutes, but receives none from them; which are the undeniable marks and Characters of a Fundamental Right in all Nations. But that this right of lineal Succession

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is one of the Fundamental, and unalterable Laws of the Kingdom of *Scotland*, is clear, by the Commission granted by the Parliament for the union in *Anno 1604*. In which „ these words are, his Majesty vouchsafeing, „ to assure them of his sincere disposition and „ clear meaning, no way by the foresaid Union „ to prejudice or hurt the Fundamental Laws, „ ancient Priviledges, Offices and Liberties of „ this Kingdom; whereby not only the Princely Authority of his most Royal descent „ hath been these many ages maintain'd, but „ also his Peoples securities of their Lands and „ Livings, Rights, Liberties, Offices and „ dignities preserv'd: Whilks if they should be „ innovated, such confusion should ensue; as „ it could no more be a free Monarchy.

6. There would many great inconveniencies arise, both to King and People, by the Parliaments having this power: For weak Kings might by their own simplicity, and GentleKings by the rebellion of their Subjects be induced to consent to such Acts, in which their Subjects would be tempted to cheat in the one case, and rebell in the other. Many Kings likewise might be wrought upon, by the importunity of their Wives, or Concubins, or by the misrepresentations of Favourits, to disinherit the true Successor; and he likewise to prevent this arbitrariness, would be oblid-

g'd to enter in a faction for his own support, from his very infancy. This would likewise animate all of the Blood Royal, to compete for the Throne, and in order thereto, they would be easily induc'd to make factions in the Parliament, and to hate one another; whereas the true Successor would be ingadg'd to hate them all, and to endeavour the ruine of such as he thought more popular than himself. Nor would the people be in better case, since they behov'd to expect upon all these accompts, constant civil warres and animosities, and by being unsure whom to follow, might be in great hazard by following him who had no Right. And their rights bearing to hold of the King and his Heirs, it would be dubious to the vassals, who should be their superiour, as well, as who should be their King. It is also in reason to be expected, that *Scotland* will ever owne the legal descent: and thus we should under different Kings of the same Race, be involv'd in new and constant civil warrs; *France* shall have a constant door open'd, by allyances with *Scotland*, to disquiet the peace of the whole *Isle*; and *England* shab loose all the endeavours it used to unite this *Isle* within it self. Another great absurdity and inconveniency which would follow upon the exclusion of the lineal Successor

cessor would be, that if he had a Son, that Son behoov'd certainly to succeed; and therefore after the next Lawful Heir were brought from abroad to Reigne, he' behov'd to return upon the Birth of this Son; and if he dyed he would be again call'd home, and would be sent back by the Birth of another Son: which would occasion such affronts, uncertainties, divisions, factions, temptations, that I am sure, no good nor wise man could admit of such a project.

I find also, that as the debarring the Righteous Heir, is in reason, the fruitful seed of all civil warr and misery, (for who can Imagine that the Righteous Heir will depart from his Right, or that wise men will endanger their lives and fortunes in opposition to it?) so experience has demonstrated, how dangerous, and bloody this injustice has prov'd. Let us remember amongst many Domestick examples, the miseries that ensu'd upon the exclusion of *Mordredus* the Son of *Lothus*; the destruction of the *Picts* for having secluded *Alpinus* the Righteous Heir; the warrs during the reign of *William* the Conquerour; these betwixt King *Stevin* and *Henry* the II, betwixt the Houses of *Lancaster* and *Terk*; betwixt the *Bruce* and the *Baliol*; the mur-

ther of *Arthur Duke of Britanny*, true Heir of the Crown of *England*, with many other forreigne Histories, which tell us of the dreadfull michiefs arising from *Pelops* preferring his youngest Son to the Kingdom of *Micene*; from *Ædipus* commanding that *Polinices* his youngest Son should reigne alternatly with the eldest; from *Parisatis* the Queen of *Persia's* preferring her youngest Son *Cyrus*, to her eldest *Artaxerxes*, from *Aristodemus* admitting his two Sons *Proclus*, and *Euristhenes* to an Equall share in the *Lacedemonian* Throne. The like observations are to be made in the Succession of *Ptolemæus Lagus* and *Ptolemæus Phisco*, In the Sons of *Severus*, in the Succession of *Sinesandus* who kill'd his Brother *Suintilla* Righteours Heir of *Spaine*, And that of *Francis* and *Fortia Duke of Millan* with thousands of others: In all which, either the usurpers or the Kingdom that obey'd them, perish'd utterly. To prevent which differences and mischiefs, the *Hungarians* would not admitte *Almus* the younger Brother, in exclusion of the elder *Colomanus*, though a silly deform'd creature, albeit *Almus* was preferr'd by *Ladislaus* (the Kings elder Brother) to both. Nor would *France* acquiesce in *St. Lewis* his preferring

ring CHARLES his 3^d Son, to *Lewis* the eldest. And the *English* refus'd to obey *Lady Iean Gray*, in prejudice of Queen *Marie*, though a Papist and persecuter. „*Tali & constanti veneratione nos Angli* „*legitimos Reges prosequimur &c.* sayes an *English* Historian.

7. If Parliaments had such powers as this, then our Monarchy would not be hereditary, but elective; the very essence of ane hereditary Monarchy consisting in the right of Succession, according to the contingency of blood. Whereas if the Parliament can preferre the next, save one, they may preferre the last of all the line: for the next save one, is no more next than the last is next. And the same reason by which they can choose a Successor (which can only be that they have a power above him) should likeways in my opinion justify their deposing of Kings. And since the Successor has as good Right to succeed, as the present King has to Govern (for that Right of blood which makes him first, makes the other next, and all these Statuts which acknowledge the present Kings Prerogatives, acknowledge that they belong to him and his Heirs.) It followes clearly, that if the Parliament can preclude the one, they

may exclude the other. And we saw even in the last age, that such reasons as are now urged to incapacitat the children of our last Monarch, from the hope of Succession. *viz.* Popery, and arbitrary Government, did embolden men to Dethrone, and Murder the Father himself who was actual King.

8. That such Acts of Parliament, altering the Succession are ineffectual, and null, Is clear from this, that though such an Act of Parliament were made, it could not debarre the true Successor: because by the Laws of all Nations, and particularly of these Kingdoms, the Right of Succession purges all defects, and removes all impediments, which can prejudice him who is to Succeed. And as *Craig* one of our learn'd lawyers „has very well express'd it, *Tanta est Regii sanguinis prerogativa, & dignitas, ut vitium non admittat, nec se contaminari patiatur.* And thus though he who were to succeed, had committed murther, or were declar'd a traitour formerly to the Crown for open Rebellion against the King, and Kingdom; yet he needed not be restor'd by Act of Parliament upon his coming to the Crown: But his very Right of blood would purge all these imperfections. Of which there are two reasons given by Lawyers,
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one is, that no man can be a Rebel against himself, nor can the King have a Superior. And consequently, there can be none whom he can offend. And it were absurd that he who can restore all other men, should need to be restored himself. The second reason is, because the punishment of crimes, such as confiscations, &c. Are to be inflicted by the Kings Authority, or to fall to the Kings Thesaurry; and it were most absurd, that a man should exact from himself a punishment. Likeas, upon this account it is, that though in the Canon Law, Bastards cannot be promov'd to sacred orders without dispensation, nor can *alibi nati*, that is to say, people born out of *England* be admitted to succeed in *England*, by express Act of Parliament there; Yet *Agapetus*, *Theodorus*, *Gelasius* and many others, have been admitted to be Popes without any formal dispensation, their election clearing that imperfection. And the Statute of *alibi nati*, has been oft found not to extend to the Royal line.

That the Succession to the Crown purges all defects, is clear, by many instances, both at home and abroad. The instances at home are, in *England* *Henry* the VI. Being disabled and attainted of high treason by Act
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of Parliament, it was found by the Judges, notwithstanding that from the moment he assum'd the Crown, he had Right to succeed without being restored. And the like was resolved by the Judges in the case of *Henry the VII.* As *Bacon* observes in his History of *Henry the VII.* fol. 13. And in the case of Queen *Elizabeth*, who was declar'd Bastard by Act of Parliament, as is clear by *Cambden* anno 2. *Elizabeth*. And though in *Scotland* there be no expresse instances of this, because though some Rebellious Ring-leaders in *Scotland*, have often in a privat capacity been very injurious to their King; Yet their Parliaments have been ever very tender of attainting the blood Royal, or presumptive Heirs. But *Alexander Duke of Albanie*, and his Succession being declared traitours, by his Brother King *James the IV.* his Son *John* was notwithstanding called home from *France* upon his Uncles death, and declar'd Tutor and Governour, without any remission, or being restor'd: that employment being found to be due to him by the right of blood: therefore he had been much more declared the true Successor of the Crown if his Cousin King *James the V.* had died.

These being sufficient to establish our design,

design, I shall mention only some forraigne stories.

CHARLES the VII. of *France* who though banish'd by Sentence of the Parliament of *Paris*, did thereafter succeed to the Crown. And though *Lewis* the XII. was forfeited for taking up armes against CHARLES the VIII. Yet he succeeded to him without restitution. And *Lewis* the II. his Son being declared a Rebel, whom his Father desiring to disinherit, and to substitute in his place *Charles* Duke of *Normandie*, that Son had succeeded if he had not been hindered by the Nobility, who plainly told him it was impossible to exclude his Sone from the Succession.

My next task shall be to satisfy the arguments brought for mantaining this opinion, whereof the first is.

That God himself has authorised the inverting the Right of Succession, by the examples of *Esau*, *Salomon*, and others.

To which I answer, that these instances which are warranted by expresse commands from God, are no more to be drawn into example, than the robbing of the *Egyptians* ear-rings. And it's needing an expresse command, and the expressing of that command, does evince, that otherwayes *Iacob*,
nor

nor *Salomon* could not have succeeded against the priviledge of birth-Right and possession.

The next objection, is that it is naturally imply'd in all *Monarchies*, that the people shall obey whilst the Prince Governs justly, As in the paction betwixt *David*, and the people 2*Sam.* 5. Which is most suitable to the principles of justice, and Government: Since relations cannot stand by one side; so that when the King leaves off to be King, and becomes a Tyrant, the people may consult their own security in laying him aside, as Tutors may be remov'd when they are suspect. And that this is most just when Kings are Idolaters since God is rather to be obey'd then men.

To all which it is answered, that God who loves order, and knows the extravagant levity, and insolence of men, especially when baited by hope of prey, or promotion, did wisely think fit to ordain under the paine of eternal damnation, that all men should be subject to Superiour powers for conscience sake. 1 *Pet.* 2. 13. and that whoever resists the power, resists God, *Rom.* 13. 2. reserving the punishment of Kings to himself, as being only their Superiour. And thus *David*, *Asa*, and others, committed
crime

crimes, but were not depos'd, nor debarr'd by the people. Nor were even the Idolatrous Kings such as *Achab*, *Manasse*, &c. judged by their subjects, nor did the Prophets exhort the people to rise against them, though they were opposing Gods expresse, and immediat will, And overturning the uncontraverted fundamentals of Religion. Nor did the Fathers of the primitive Church, excite the Christians to oppose the Heathen, and Idolatrous Princes, under which they lived: and *Paul* commands them to pray for these Heathen Emperours. Nor was the Emperour *Basilicus* depos'd for abrogating the Council of *Chalcedon*, as is pretended by some Republicans, but was turn'd out by the just Successor *Zeno*, whom he had formerly dethron'd. Nor were *Zeno* or *Anastasius* degraded for their errors in Religion, or their vices by the ancient Christians: but were oppress'd by private faction. And sure they must think God unable to redress himself, who without warrand, and against his expresse warrand, will usurpe so high a power. And we in this rebellious principle, owne the greatest extravagancy with which We can charge the Pope and Jesuits, and disowne not only our own Confession of faith „ which Article 1. *Chap. 22.* acknowledges, „ that

„ that infidelity, or difference in Religion
 „ doth not make void the Magistrats just, or
 „ legal authority, nor free the People from
 „ their due obedience to him; but contradict
 the best Protestant divines, as *Musculus*,
Melancthon and others *vid. libell. de vi-*
tand. superstit. Anno 1150. & Consil. Biden.
Dec. 1. Consil. 10. & Decad. 10. Consil. 3.
 nor can the subterfuge us'd by *Buchanan*,
 and others satisfie, whereby they contend
 that the former Texts of Scripture prove on-
 ly that the Office, but not the Persones of
 Kings are Sacred: so that Parliaments or
 People may lay aside the Persons, though
 not the Office, seing the Sacred Text secures
 oftner the Person, than the Office, as I have
 formerly more fully prov'd. And if this
 principle prevail'd as to the differences in the
 Theory of Religion, it would in the next step
 be urg'd as to the practice of Religion; and
 we would change our Kings, because we
 thought them not pious, as well as Prote-
 stants. And did not our Sectarians refine so
 far, as to think dominion founded on grace?
 and this opinion seems to my self more solide
 than the other, for certainly an impious
 Protestant, is a worse Governour, and less
 Gods Vicegerent, and image, than a de-
 vout Papist. And amongst Protestants, every
 Secte

Secte will reject a King, because he is not of their opinion. And thus our Covenanters; by the Act of the West-kirk *Anno* 1650. declar'd, they would disown our present Monarch, if he did not own the Covenant. And though a King were Protestant, yet still this pretext that he design'd to introduce Popery, would raise his People against him, if differences in Religion could Lawfully Arme subjects against their King, or did empower them to debar his Successor. And when this cheat prevail'd against devout King *Charles* the I, the Martyr of that Orthodox Faith to which he was said to be enemy, what a madness is it to allow this fatal error, which was able to ruine us in the last age, and went so near to destroy us in this? This is indeed, to allow that arbitrariness against our Kings, which we would not allow in them to us.

The second Objection is, that in *England* the Parliament has frequently devolv'd the Crown and Government upon such as were not otherways to have succeeded, as in the instances of *Edward* the II. and *Richard* the III, the first of whom was most unjustly depos'd, for making use of *Gavestoun*, and the *Spencers*; which shewes how extravagant the People are in their humours, rather than how just their power is: for besides, that

do not read, that these Counsellors were unsufferable, there is no good Christian that can say, that a King can be depos'd for using ill Counsellors. And as to *Richard* the III. his case is so fully examined, and all the Articles brought both against him, and *Edward* the II. so fully answered by the learn'd *Arniseus* a Protestant Lawyer, (and who had no other interest in that debate than a love to Truth and Law) in that treatise, *Quod nullà ex causâ subditis fas sit contra legitimum principem arma sumere*, that we Protestants should be asham'd to bring again to the field such instances, upon which *Arniseus*, in answer to the 14. Article against *Richard* the II, viz. that he refus'd to allow the Lawes made in Parliament, does very well remark, that this was in effect to consent to their being King, and to transferre upon them the Royal power, and this will be the event of all such undertakings.

The instances of *Henry* the IV. and *Henry* the VII., are of no more weight than the other two, since these were likeways only Kings *de facto*, till King *Henry* the VII. by his marriage with the Lady *Elizabeth*, eldest Daughter to King *Edward* the IV., did by her transmit a just title to his Successor: & therefore it was not strange, that either of these

these should allow the Parliament to interpose, when they behov'd to owe to them the possession of the Throne. But yet *Henry* the VII. himself (as the Lord *Bacon* relates in his Historie) shunn'd to have the Parliament declare his title to be just, being content with these ambiguous words, *viz. that the inheritance of the Crown should rest, remain and abide in the King, &c.* And upon this accompt it was, that the same King caul'd make a Law, that such as should serve the King for the time, being in his warrs, could not be attainted or impeach'd in their persons or Estates.

As to *Henry* the VIII. his procuring an Act, whereby the Parliament declares that in case he had no issue by the Lady *Jean Seymour*, he might dispose of the Crown to whatsoever person he should in his own discretion think fit.

It is answered, that by a former Statute in the 25 year of his Reigne, he by Act of Parliament setles the Crown upon the Heirs male of his own body, and for lack of such issue, to Lady *Elizabeth*, and for lack of such issue also, to the next Heirs of the King, who should for ever succeed according to the right of Succession of the Crown of *England*; which shewes that the Succession to the

Crown of *England* is establish't by the Law of Nature, and the Fundamental Laws of *England*, upon the Heirs of Blood, according to the proximity of degrees; so that though that King did afterwards prevaile with the Parliament to declare this *Elizabeth* a Bastard, as he did also his Daughter *Mary*, by another Act, and resolve to settle the Crown, upon *Henry Fitz Roy*, Duke of *Richmond*, yet these Acts teach us how dangerous it is to leave Parliaments to the impression of Kings in the case of naming a Successor, as it is to expose Kings to the arbitrariness of Parliaments. But such care had God of his own Laws, that *Mary* succeeded notwithstanding She was Papist, and *Elizabeth* succeeded her, though she was declar'd Bastard; the Rights of Blood prevailing over the formalities of divorce, and the dispensations of Popes: as the strength of Nature does often prevaile over poisons. And God remov'd the Duke of *Richmond* by death, to prevent the unjust competition, and so little notice was taken of this; and the subsequent Act *Anno 1535*, that the Heirs of Blood succeeded without repealing of that Act, as an Act in it self invalide from the beginning: for only such Acts are past by, without being repeal'd. And *Blackwood* pag. 45. observes very well, that

that so conscious were the Makers of these Acts, of the illegality thereof, and of their being contrarie to the immutable Laws of God, Nature and Nations, that none durst produce that Kings Testament wherein he did nominat a Successor, conform to the power granted by these Acts, that how soon they were freed by his death from the violent oppressions that had forced them to alter a Successor three several times, and at last to swear implicitly to whomever he should nominat, (a preparative which this age would not well bear though they cite it) they proclaimed first Queen *Mary* their Queen though a Papist, and thereafter Queen *Elizabeth*, whom themselves had formerly declared a Bastard. And as in all these Acts there is nothing declaring the Parliaments to have power to name a Successor, but only giving a power to the King, for preventing mischiefs, that might arise upon the dubiousness of the Succession, to nominat a Successor; two of the legal Successors having been declar'd Bastards upon some niceties, not of nature, but of the Popes Bulls for divorcing their Mothers: so, this instance can only prove, that the King may nominat a Successor, and that the Parliament may consent, not to quarrell it, (which is all that they do) but does not at all prove,

that where the Right of Nature is clear, the Parliament may invert the same. And strangers who considered more the dictats of Law than of Passion, did in that age conclude, that no Statute could be valide when made contrare to the fundamental Law of the Kingdom, *Arniseus Cap. 7. Num. 11. Henricus VIII. Angliæ Rex Eduardum filium primò, deinde Mariam, denique Elizabetham suos hæredes fecerat, verum non aliter ea omnia valent quàm si cum jure Regni convenient, Vid. Curt. Traët. Feud. Par. 4. Num. 129.*

There seems greater difficulty to arise from the 13 *Elizabeth* c. 2. by which it is enacted, that if any persone shall affirme, that the Parliament of *England* has not full power to bind and Governe the Crown in point of Succession and descent, that such a persone, during the Queens life, shall be guilty of high treason.

But to this Act it is answered, that this Act does not debarre the next legal and natural Successor. And these words, *That the Parliament has power to bind and Govern the Succession*, must be, as all other general expressions in Statutes, interpreted and restricted by other uncontraverted Laws; and so the sense must be, that the Parliament are Judge where

where there are differences betwixt Competitors in nice and contravertable points which cannot be otherwise decided : and both this and the former Acts made in *Henry* the VI. time, are not general Laws but temporarie Acts and personal Priviledges; and so cannot overturn the known current of Law. *Quod verò contra rationem juris receptum est, non est producendum ad consequentias.* And in all these instances it is remarkable, that the restriction was made upon the desire of the *Souveraigne*, and not of the Subject. And if we look upon this Act as made to secure against *Mary* Queen of *Scotland*, and to let her know, that it was to no purpose for her to designe any thing against the Right, or Person of Queen *Elizabeth*, as being declar'd a Bastard, by Act of Parliament in *England*; since her other right as next undoubted Heir by Blood to the Crown, might be altered, or Govern'd : we must acknowledge it to be only one of these Statutes, which the Law sayes, are made *ad terrorem* & *ex terrore* only. Nor was there ever use made of it by Queen *Elizabeth*, nor her Parliaments; so fully were they convinc'd, that this pretended power was so unjust, as that it could not be justified by an Act of Parliament, being contrair to the

Laws of God, of Nature, of Nations, and of the Fundamental Laws of both Kingdoms. But this Law being made to exclude Queen *Mary*, and the *Scotish* line, as is clear by that clause, wherein it is declared that every Person or Persones of what degree or Nation soever they be, shall during the Queens life declare or publish, that they have Right to the Crown of *England* during the Queens life, shall be disinabled to enjoy the Crown in Succession, inheritance, or otherwayes, after the Queens death; It therefore followes, that it was never valide: For if it had, King *James* might have thereby been excluded by that person who should have succeded next to the *Scotish* race. For it's undeniable, that Queen *Marie* did, during Queen *Elizabeths* life, pretend Right to the Crown, upon the account that Queen *Elizabeth* was declared Bastard. And therefore the calling in of King *James* after this Act, and the acknowledging his title, does clearly evince, that the Parliament of *England* knew, that they had no power to make any such Act. The words of which acknowledgement of King *James's* Right, I have thought fit to set down, as it is in the statute it self, 1. *Ja.* „Cap. 1. That the Crown of *England* did descend

„descend upon King *James* by inherent
 „Birthright, as being lineally, justly, and
 „Lawfully next, and sole Heir of the Blood
 „Royal. And to this recognition they do
 „submit themselves, and posterities for
 „ever, untill the last drop of their Blood be
 „spilt. And further doth beseech his Majesty
 „to accept of the same recognition, as the
 „first Fruits of their Loyalty, and Faith to
 „his Majesty, and to his Royal progeny, and
 posterity for ever.

It may be also objected, that by the 8,
 Act. Parl. 1. *Ja.* 6. It is provided in *Scotland*,
 that all Kings and Princes that shall happen
 to reigne and bear Rule over that Kingdom,
 shall at the time of their Coronation, make
 their faithfull promise by Oath in presence
 of eternal God, that they shall maintaine
 the true Religion of *Iesus Christ*, the prea-
 ching of the Holy Word, and due and Right
 Administration of the Sacraments now re-
 ceived and preach'd within this Kingdom;
 from which two conclusions may be inferr'd,
 1. That by that Act the Successor to the
 Crown may be restricted. 2. That the Suc-
 cessor to the Crown must be a Protestant,
 that being the Religion which was Professed
 and established the time of this Act.

To which it is answered, that this Act re-

lates only to the Crowning of the King, and not to the Succession. Nor is a coronation absolutely necessar, *Coronatio enim magis est, ad ostentationem, quàm ad necessitatem.* „*Nec ideo Rex est quia coronatur, sed coronatur quia Rex est.* Oldard: consil. 90. num. 7. Balbus lib. de coronat. pag 40. Nor do we read that any Kings were Crown'd in Scripture except *Ioas*. And *Clovis* King of *France* was the first, who was Crown'd in *Europe*. Nor are any Kings of *Spaine* Crown'd till this day. Neither is ane Coronation Oath requisit; *Sisenandus* being the first who in the 4. Tolletan Council gave such an Oath amongst the *Christians*, as *Trajan* was the first amongst the heathen Emperours. And we having had no Coronation Oath till the Reigne of King *Gregorie*, which was in *Anno* 879, he having found the Kingdom free from all Restrictions, could not have limited his Successor, or at least could not have debarr'd him by an Oath. „*Nullam enim poterat legem dictare posteris, cum par in parem non habeat imperium,* as our *Blackwood* observes. pag. 13.

(2.) There is no clause irritant in this Act debarring the Successor, or declaring the Succession null in case his Successor gave not this Oath. 3. The Lawfull Successor though he were of a different Religion from his
 People

People (as God forbid he should be) may easily swear, that he shall maintaine the Laws presently standing. And any Parliament may legally secure the Successor from overturning their Religion or Laws, though they cannot debarre him. And though the Successor did not swear to maintaine the Laws, Yet are they in little danger by his Succession; since all Acts of Parliament stand in force, till they be repeal'd by subsequent Parliaments: And the King cannot repeale an Act without the consent of Parliament. But to put this beyond all debate, the 2. Act of this current Parliament is opponed, whereby it is declared, *that the Right and administration of the Government is immediatly devolv'd upon the next Lawfull Heir after the death of the King or Queen, and that no difference in Religion, nor no Law nor Act of Parliament can stop or hinder them in the free and actual administration*; which is an abrogation of the foresaid Act concerning the Coronation as to this point: for how can the administration be devolv'd immediatly upon the Successor, if he cannot administrat till he be Crown'd, and have sworn this Oath.

The next objection is, that since the King and Parl. may by Act of Parl. alter the Successions of privat families though transmitted by
the

the Right of blood, why may they not alter the Succession in the Royal family?

To which it is answered, that the reason of the difference lyes in this, that the Heirs of the Crown owe not their Succession to Parliaments: for they succeed by the Laws of God, nature, and the Fundamental Laws of the nation; whereas privat Families are Subject to Parliaments, and inferiour to them, and owe their privat Rights to a municipal Law, and so may and ought in point of Right to be regulated by them. And yet I am very clear, that a Parliament cannot arbitrarily debarr the eldest Son of a privat Family, and devolve the Succession upon the younger: and if they did so, their Acts would be null. But if this argument were good, we might as well conclude by it, that no persone born out of *England*, or attainted of treason could succeed to the Crown; Because he could not succeed to a privat Estate. All which and many moe instances do clearly demonstrat that the Successor to the Crown cannot be debarr'd, nor the Succession to the Crown diverted by Act of Parliament.

The last objection is, that *Robert* the III. King of *Scotland*, was by ane Act of Parliament preferr'd to *David* and *Walter*, who

were

(as he pretends) were truly the eldest lawful Sons of *Robert* the 2^d. because *Euphan* Daughter to the Earl of *Ross* was first lawful Wife to King *Robert* the 2^d. and she bore him *David* Earl of *Strathern*, and *Walter* Earl of *Athol*, *Alexander* Earl of *Buchan*, and *Euphan* who was married to *James* Earl of *Douglass*, after whose decease he married *Elizabeth Muir*, Daughter to Sir *Adam Muir* ; not so much (as *Buchanan* observes) from any design to marry a second Wife, as from the great love he carried to *Elizabeth Muir*, whom because of her extraordinary Beauty he had lov'd very passionately in his youth, and before he married the Earl of *Rosses* Daughter, and from the love which he bore to the Sons whom *Elizabeth* had born before that first Marriage, who were *John* Earl of *Carrick* (who thereafter succeeded to the Crown by the Title of *Robert* the 3^d.) and *Robert* Earl of *Fife* and *Monteth*, he prevail'd with the Parliament to prefer *John* eldest Son by *Elizabeth Muir*, to the two Sons which he had by the Earl of *Rosses* Daughter, who was (as they pretend) his first lawful Wife.

In which though I might debate many nice points of Law relating to this Subject;

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yet

yet I choose only to insist on these few convincing Answers.

1. That in a Case of so great moment Historians should be little credited, except they could have produc'd very infallible Documents; and as in general one Historian may make all who succeed him err, so in this Case *Boetius* (who was the first) liv'd and wrot 200 years after the Marriage of King *Robert* the 2^d, and wrot his History at *Aberdeen*, very remote from the Registers and Records by which he should have instructed himself; nor did he know the importance of this point, having touch'd it only transiently, though it has been design'dly press'd by *Buchanan*, to evince that the Parliaments of *Scotland* might prefer any of the Royal Line they pleas'd; and it is indeed probable that King *Robert* the 2^d. did for some time make no great noise of his first Marriage with *Elizabeth Muir*, least the meanness of the Match should have weaken'd his Interest upon his first coming to the Crown, he being himself the first of the Race of the *Stewarts*, and having so strong Competitors as the Earl of *Dowglass*, who claim'd Right to the Crown in the Right of the *Bailiol* and the *Comings*, as *Boetius* himself observes.

2. King

2. King *Robert* the 3^d. having succeeded as the eldest lawful Son, and having been receiv'd as such by that Parliament, and his Posterity by all succeeding Parliaments, the Possession of the King and the Acquiescence of the People is the most infallible proof that can be adduc'd for proving that *Robert* was the eldest lawful Son, nor have most Kings in *Europe*, or the Heads of most private Families any other proof of their being the eldest and lawful Sons, save that they succeeded and were acknowledg'd as such.

3. To ballance the authority of these Historians, I shall produce the Testimonie of the Learned *Sir Lewis Stewart*, one of the most famous Lawyers we ever had, and who ought much more to be believ'd than *Buchanan*, not only because he was more disinterested, but because he founds upon Acts of Parliament and old Charters which he himself had seen in the Registers, in which *Elizabeth Muir* is acknowledg'd to have been the first Wife. *Buchananus lib.*

9. in vitam Roberti 2. affirmat Euphaniem Comitiss Rossensis filiam primam Regis Roberti 2. uxorem fuisse & eâ mortuâ, Regem superinduxisse Elizabetham Moram ex qua prius Liberos ternos mares suscepisset, & eam uxorem

rem duxisse, ejusque liberos regno destinasse, ut postea eorum natu maximus successit quod quam falsum sit, apparet ex archivis in carcere Edinburgensi reconditis, ubi exstant separata acta duorum Parliamentorum, subscripta manibus Ecclesiasticorum praesulum, nobilium, baronum, & aliorum statuum Parliamenti, & eorum sigillis roborata, quibus Elizabetha Mora agnoscitur prima uxor, & Euphania Rosse secunda, & liberis ex Elizabetha Mora tanquam justis heredibus Regni, successive regnum d'cernitur, & post eos liberis Euphaniae Rosse nec non ibidem carta extant plurimae, factae per Davidem secundum, eorum patrum magnum ex diversis terris, Ioanni filio primogenito, nepotis ejus Roberti, dum Euphania Rosse viveret nec non Davidi filio natu maximo Euphaniae Rosse quem solum filium indigitat Roberti nepotis, quod non fecisset si Elizabetha Mora non prius fuisset nupta Roberto ejus nepoti, nam primogenitus nunquam attribuitur notho imo ego plures quam viginti cartas in archivis invenî, ubi etiam eas reliqui, ex quibus solèctarius elucessit, Elizabetham Moram primam fuisse uxorem, & Euphaniem Rosse secundam, nam extra contraversiam, liberi Elizabethae Morae etate grandiores erant liberis Euphaniae Rosse : which Paper I did get from

from the Lord *Pitmeden*, who has himself written some learn'd Observations upon this point.

4. I have my self seen an Act of Parliament (found out by the industry of Sir *George Mackenzie* of *Tarbet*, now Lord Register) having the intire Seals of the Members of Parliament appended thereto, by which the Parliament do swear Allegiance to *Robert* the 2^d. the first King of the Race of the *Stewarts*; and after him *Roberto Comiti de Carriæ, filio suo nato maximo* (his eldest Son) in *Anno 1371*, which was the first year of his Reign; and if the pretended defect be true, it was a very palpable, and a very undeniable one, and could not but have been unanswerably known to the whole Nation. And how can we imagine, that the whole Parliament would have unanimously drawn upon themselves so dreadful a Perjury, by excluding the lawful Heir, against their National Oath in the Reign of *K. Kenneth* the 3^d, whereby they swore to own always the immediate Heir, or that they would have entail'd upon themselves a Civil War, by preferring even a questionable Heir, after the Miseries which they had lately then felt, in the competition betwixt the *Bruce* and the

the *Baliol*. Amongst which Seals, the Seal of *James Earl of Dowglass* is one, and how ridiculous is it to think, that he would sit and declare a Bastard preferable to the Brother of his own Lady, and to his own Lady who would have succeeded if her Brothers had died without Succession : Which Act of Parliament does also clearly prove, that *Buchanan* did not at all understand matters of Fact in this part of the History, for he asserts, that after the death of *Euphan Ross*, the King married *Elizabeth Muir*, and did by Act of Parliament obtain the Crown to be settled upon *Robert* the 3^d, Son to the said *Elizabeth Muir*, upon whom he also bestow'd the Title of *Carrick*; all which is most false, for this Act of Parliament is dated in *Anno 1371*, and King *Robert* the 2^d. succeeded to the Crown that year, nor did *Euphan Ross* die till the 3^d. year after he succeeded to the Crown, and so not till the Year 1374, and yet in *Anno 1371* this Act is pass'd, designing him Heir to the Crown, and Earl of *Carrick*, and consequently he was so design'd before the death of *Euphan Ross*.

5. I have seen a Charter granted by King *Robert* the 2^d, when he was only Steward of *Scotland*, granted in *anno 1165*, and

and so long before he was King. In which Charter likewise, *John*, thereafter King, by the name of *Robert* the 3^d, is a conjunct Disposer with him, under the express designation of the eldest Son and Heir. *Robertus Senescallus Scotiae, Comes de Strathern, & Ioannes Senescallus primogenitus & heres ipsius Dominus Baronia de Kyle, &c.* which Charter confirms to the Abbacy of *Passey* several Lands disposed to them, by *Reginaldus More*, Father to Sir *William More* of *Abercorn*. And I find that *David* Duke of *Rothsay*, was always in the Charters granted by his Father King *Robert* the first, called *Primogenitus*, and he was no Bastard, nor can this designation be given to a Bastard, as is clear by *Covarvitas de Matrim. part. 2. cap. 8. §. 2. num 4.* But how can it be imagined that the Monks of *Passey* would have taken a Right from a person as Heir to the Crown, who was not: for this would have infer'd Treason against them, beside the annulling their Right, or who could understand better the lawfulness of a Marriage, than a body of Church-men, living in the time, and very near to the Residence of the married Persons, and in whose Conventual-Church the said King *Robert* and *Elizabeth* Anir ly buried together,

Item, I have seen in the Registers another Charter granted by King *Robert* the 2. in the first year of his Reign, with the consent of *John* Earl of *Carrick*, *primogenitus & heres*, *Allano de Lavidia terrarum de Whitslet*; And an other granted by the said King, 1. June, *anno primo regni*, confirming to *Paulo Mc'tire* a Charter granted by the Earl of *Ross*, Father to *Euphan*, wherein the said *John primogenitus & heres*, is a Witness: And to shew that the said *Euphan Ross* was then living when he was so design'd Heir, there is a Charter to her by the King upon the very same day of the Lands of *Lochleaven*. As also, there is a Charter granted by King *Robert* the 2d, the first year of his Reign, to *Alexander* his Son, and another to *John Kennedy* of the Barrony of *Dalrymple*, in both which the said *John* Earl of *Carrick* is call'd *primogenitus*, - and is Witness with the Earl of *Dowglass*; so that he has been design'd eldest Son and Heir, openly, uncontravertedly, and in all Papers, and with the consent of the second Wife and her Relations.

6. In the Parliament 1372, the said *John* Earl of *Carrick* is design'd to be Lieutenant of the Kingdom, and all the Estates

of

of Parliament swear to own him in his Government, and which Statute is printed amongst the Statutes of King Robert the 2^d, Father to the said John, and which must be during the Marriage with Euphan Ross, for she liv'd three years after her Husband was King, and he succeeded to the Crown Anno 1371 : And this also confutes Buchanan, who asserts, that he was created Earl of Carrick after the death of Euphan Ross, and it is against all sense and reason to think that he could have been acknowledg'd during her life, if he had not been the true Apparent Heir of the Crown and a lawful Son.

7. Walter (who they pretend should have succeeded to the Crown,) having kill'd his Nephew King James the first, Son to King Robert the 3^d ; He was not only not own'd after the death of the said King James, as certainly he had been if his Title had been good, and his Right so recent and demonstrable, having so many great and powerful Relations, that his Father was induc'd upon their account to marry his Mother ; but yet the said Walter was by all the Parliament unanimously condemn'd as a Traitor, for having conspir'd the death of his lawful Prince. Nor does

Bectius justifie *Walter's* Title in the least, but on the contrary, magnifies the Parliament for their just Sentence. As did likewise *Aeneas Silvius* the Popes learned Legat, who exhorted the Parliament to condemn him.

8. How is it imaginable, that King *Robert* who had so lately, and after a strong competition come to the Crown, would have adventur'd to make his Title yet more disputable, by preferring a Bastard to the true Heir, who had so many Friends by his Mother, and who being an Infant had never disoblig'd him.

9. If we will consider the opinion of the *Civilians*, whom we and almost all Nations follow in the Cases of Succession, we will find, that the said King *Robert* the 3^d was the eldest and lawful Son of King *Robert* the 2^d. *filius legitimus, & non legitimatus*. For, 1. They conclude, that a Son is prov'd to be a lawful Son by the Assertion of the Father, *Alciat tract presumpt. Reg. 2. presumpt. 2. num. 6.* and certainly the Father is the best Judge in such Cases; but so it is we have the Father owning the said *Robert* the 3^d. to be his eldest Son and Heir, both in Charters and Acts of Parliamnets, which are the most solemn of all Deeds. 2. *Quando pater*

pater instituit aliquem tanquam filium suum, which holds in this Case, where the Father institutes and leaves him Heir, and the Parliament swears Allegiance to him as the Heir, *Mascard. de prob. vol. 2. conclus. 799.* And in dubious Cases, the Father's naming such a man as a Son, presumes him to be a lawful Son, *nominatio parentis inducit filiationem in dubio, l. ex facto §. si quis Rogatus ff. ad trebell.* 3. Even Fame, and the common opinion of the People, do in favours of these that are in Possession, and in ancient Cases, prove *& filiationem, & legitimationem*, *Mascard. conclus. 792.* but much more, where the Fame and common Opinion is adminiculated by other Arguments, *fulgos consil. 128. Panorm. in cap. transmiss. qui filii sunt legitimi.* 4. When Writs are produc'd, calling a man a Son, the Law concludes him to be a lawful Son. *Mascard. vol. 2. conclus. 800. num 15.* all which can be easily subsum'd in our Case. In which *Robert* the 3^d. is nam'd not only Son, but Heir, and Allegiance sworn to him, even in the lifetime of the second Wife and her Relations sitting in Parliament, and all this acquiesc'd in for many hundreds of years, and the Competitors punish'd as Traitors by the unanimous consent of all the Parliament.

I know that *Buchanan* does most bitterly inveigh against those Laws made by King *Kenneth* the 3^d, as Laws whereby the ancient Right of Succession was innovated, and whereby the Government was settled upon Children who were neither able to consult with the People, nor to defend them, and whereby those had the Government of the Nation conferr'd upon them who were not capable to govern themselves.

To which my answer is, That in this *Buchanan's* Malice contradicts his History, for his own History tells us, that the *Scots* swore Allegiance to *Fergus* and his Posterity; and consequently *Fergus's* Son ought by Law to have succeeded, and not his Brother, for his Brother was none of his Posterity, and therefore those Laws made by *K. Kenneth* did but renew the old Law, and the innovation introduc'd in favours of the Uncles, was a subversion of the fundamental Law to which they had sworn.

2. That the old Law was not abrogated, but was in Being by vertue of the first Oath, appears very clear by *Buchanan* himself, who confesses, that upon the death of *Durſtus*, a wicked Prince, it was debated whether his Son should not succeed.

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juxta sacramentum Fergusio prestitum veterique esse morem servandum, which acknowledgeth that the Succession was even in these days established by Law, by Oath, and by Custom; and after the death of *Fergus* the 2^d, his Son *Eugenius* (though a Minor) was crown'd, and his Uncle *Gramus* allow'd to be his Tutor. And *Buchanan* also brings in Bishop *Kennedy*, lib. 12. praising this Law as made by *Kenneth*, a most wise and glorious Prince, with advice of all his Estates of Parliament; and which rather confirms (as he says) the old Law than introduces a new one, so far did *Buchanan's* rage against Queen *Mary* prevail with him, to praise and rail at the same individual Law; and it is observable, that it is very dangerous to recede once from fundamental Laws, for *Buchanan* makes not only the Succession Elective; but he makes no difference betwixt lawful Children and Bastards, and excludes not only Minors during the Uncles life, but Women for ever. 3. In all Nations where the Monarchy is Hereditary, Minors succeed, and so this innovation of causing the next Male succeed for all his Life, was contrary to the nature of the Monarchy and to the Customs of all Nations, and God in Scripture

pture gives us many instances of it : *Jeez*
 succeeded when he was seven years of Age,
Jeshiah when he was eight, *Manasseh* in
 twelve, and *Azariah* in sixteen ; and yet
 in those days, God is said to have chosen
 the King, for it is said in *Deut. Thou shalt*
set over thee, the King whom I have chosen,
 and consequently the choice of Minors can-
 not be ill, since God Almighty us'd to
 make such a choice. I know that *Ecclesi.*
10. 16. says, *Woe unto the land when thy*
King is a child, but the Criticks interpret
 this of a King that is childish, *puer intellectu*
& moribus, or because Factions arise by the
 opposition to his Regents, and this incon-
 veniency did more necessarily attend the
 allowing a Regent King during Life, for
 both the Subjects and the true Heir rais'd
 Factions in that Case, whereas the Subjects
 only are factious in the other, and yet even
 they are no more factious for that short
 time, than they are always in Common-
 wealths. 4. The reason why the Minor
 King was to have one to supply his Non-
 age ceasing with his Majority, it was un-
 reasonable that the Remedy should have
 lasted beyond the Disease, and the worst
 effect that could have been occasion'd by
 the Infant King's Minority was, that the
 Kingdom

Kingdom should have been during that time govern'd by joynt advice of Parliament, Councils, and Officers of State, which in *Buchanan's* opinion in other places of his History and Book *De Jure Regni*, is so excellent a Model, that he decrys Monarchy as much inferior to it. 5. It was most inconvenient to accustom any private Family to live in the quality of a King. 6. It could not but occasion many Murders, and much Faction, for the true Heir could not live peaceably under this Eclipse and Exclusion, nor could the Uncle live without making a Party to secure his pleasant Usurpation. 7. As these Divisions and Factions were the natural and necessary Effects that were to be expected from this irregular Succession, so it is very observable, that from King *Fergus* to King *Kenneth* the 3^d, we had 79. Kings, amongst whom, almost the half were the most impious, tyranical, or lazie Kings that ever we had, according to *Buchanan's* character of them; so happy and wise a thing is this (so much magnified) Election of a Successor by the People and their Representatives, to supply the defects of the lawful Heir, whereas from King *Kenneth* the 3^d, to King *CHARLES* the 2^d. *inclusive*, we have

have had 31. Kings, 26. of whom have succeeded by a due lineal Right, and have prov'd vertuous Princes, greater by their Merit than their Birth, as if God had design'd to let us see, that though most of them succeeded whilst they were very young, yet that he can choose a fitter Successor than Parliaments can do; whereas the other 5. Kings who came to the Crown against that Law of *Kenneth* the 3^d, viz. *Constantine* the bald, *Grimus*, *Mackbeath*, *Donal Bain*, and *Duncan* the 2^d, were all persons who deserved very ill to be preferred to the true Heir, and who, as they came to the Crown against Law, so govern'd without it: And it is very strange, that the *Fanatics*, who think that every throw of the Dice is influenc'd by a special Providence, will not allow, that God does by a special Providence take care who shall be his Representative, who shall be the Pastor of his Flock, and nursing Father of his Church; let us therefore trust his Care more than our own, and hope to obtain more from him by Christian Submission, Humility and Obedience than we can by Caballing, Rebelling, and Sacrilegious-Murdering, or Excluding the true Successor.

*What follows is immediatly to be
Subjony'd to the Testimony of
Calvin, Page 90.*

I Know that to this it may be answered,
That the same *Calvin* does qualifie his
own words, which I have cited with this
following Caution, *Si qui sunt* (saith he)
populares Magistratus, ad moderandam Re-
gum libidinem constituti (quales olim erant
qui *Lacedemoniis* regibus oppositi erant *ephori*;
& quâ etiam fortè potestate (ut nunc res ha-
bent) *fuguntur in singulis regnis, tres ordines;*
quum primarios conventus peragunt) adeo il-
los ferocienti *Regum* licentia, pro officio inter-
cedere non veto; ut si *Regibus* impotenter
grassantibus, & humili *plebeculâ* insultanti-
bus conniveant, eorum dissimulationem nefa-
riâ perfidiâ non carere affirmam; quia *populi*
libertatem, cujus se tutores *Dei* ordinatione
positos nôrunt, fraudulenter produnt.

To which my reply is, That these words
must be so constructed, as that they may
not be inconsistent with his former clear and

(22)
Orthodox Doctrine, of not resisting Supreme Powers, the former being his positive Doctrine, and this but a supervenient Caution, and they do very well consist, for though *Calvin* be very clear, that Kings cannot be resisted, yet he thinks that this is only to be mean'd of those Kings who have no Superiors to check them by Law, as the Kings of the *Lacedæmonians* had, who by the fundamental Constitution of their Monarchy, might have been call'd to an account by the *Ephori*, and so in effect were only Titular Kings: Or of such Monarchs as had only a co-ordinate Power with the States of their own Kingdom; and even in these Cases, he does not positively assert, that these Monarchs may be resisted, but does only doubt whether if there be any such Superior or co-ordinate Magistrate representing the People, they may not restrain the Rage and Licentiousness of their Kings: But that Caution does not at all concern the *Jus Regni apud Scotos*, because this cannot be said of the Kings of Great Britain, since the States of Parliament are only call'd by the King, and derive their Authority from him, and the Legislative Power is solely in the King, the States of Parliament being only Consenters,
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he and not they can only make Peace and War, and grant Remissions, and against him and not them Treason only is committed, and the Law Books of both Nations do affirm, that the King is Supream, and consequently even according to *Calvin's* Doctrine, neither his People, nor any of their Representatives, can justly oppose, and much less punish him.

I know that *Grotius* is by the Republicans, and the Fanaticks, oft-times cited to defend this their Doctrine, of opposing Princes; but though his Testimony might be justly rejected, as being himself born under a Commonwealth, yet he is most impudently cited, for he *lib. 1. cap. 4.* does positively lay down as a general and undoubted Rule, that *Summum imperium tenentibus, resisti non potest*, Those who have the Supream Power cannot lawfully be resisted; which Rule he founds upon the Principles of Reason, the Authority of Scripture, and the Practice of the Primitive Church; and though he limits the same thereafter by some exceptions, yet it will easily appear, that these exceptions extend not at all to our Case.

For the first relates only to such Kings, as have receiv'd their Power with express condition,

condition, that they may be try'd by other Magistrats.

The *second* to such as have voluntarily resign'd their Empire, as *Charles the 5th.* did; and so the one may be oppos'd, because they were only Titular Kings: and the other, because they left off to be Kings, and consequently we are concerned in neither of these Cases.

The *third* limitation is only in the Case where he who was truly a King, has alienated his Kingdom to Strangers; In which Case, *Grotius* does contend, that Subjects may refuse to obey, because he ceaseth to be their King. But as this is not our Case, so even in that Case *Grotius* is very clear, that if this alienation be made by an Hereditary Monarch, the alienation is null, as being done in prejudice of the lawful Successor, but he does not at all assert that the Monarch may be thereupon depos'd by his People.

The *fourth* relates only to such Kings, as from a hatred to their Countrey, design its Destruction and utter Ruine; but as he confesseth himself, *Id vix accidere potest in Rege mentis compote*; and consequently can take only place in a mad Man, in which Case all Laws allow the Kingdom to be
rul'd

ru'd by Governours, and Administrators in the King's Name, if the Madnes be Natural, and a total depravation of Sense. But if by Madnes be mean'd a moral Madnes, and design to ruine the Kingdom and the Subjects, as was, and is most impiously pretended against King CHARLES the first, and King CHARLES the 2^d, the best and most reasonable of Kings; then Opposition in such Cases is not at all warranted by *Grotius*, who speaks only of a Physical and Natural Madnes; for else, every thing that displeaseth the People should be call'd Madnes; and so the exception should not limit but overturn the general rule, and should arm all Subjects to rebel against their Princes, and make them the Sovereign Judges in all Cases. Which is inconsistent with *Grotius*'s own Doctrine, and is excellently refuted by his own Reasons.

The *fifth* relates only to Kings, who by the fundamental Laws of the Kingdom are ty'd to such and such Conditions, so as that if they fail in them, they may be oppos'd.

The *sixth* relates only to Kingdoms where the Power is equally devided betwixt the King and the Senate.

The *seventh* is in case the King was at first invested by the People, with expres reservation

reservation to them to resist in such and such
 Cases, and so is almost the same with the
fifth, and all these three differ little from
 the *first*. And with *Grotius* good leave,
 they err also in this, that they are not pro-
 perly exceptions from his own rule, for the
 rule being only, that Supream Powers can-
 not be resisted, these Powers are not Su-
 pream, and they needed not be caution'd
 by an exception, since they did not fall
 under the rule. But neither of these Cases
 extend to us, since our King is by the
 Acts of Parliament formerly cited, declared
 to be Supream over all Persons and in all
 Causes, nor made our Predecessors any such
 expresse reservations at the first erection of
 the Monarchy, and consequently by *Gro-
 tius* own positive Doctrine cannot be re-
 sisted. And so far is *Grotius* an enemy to
 such Fanatical Resistance, upon the pre-
 tence of Liberty and Religion, that *num. 6.*
 he calls the Authors of these Opinions,
 Time Servers only. And *Gronovius* a vio-
 lent Republican and Fanatick, taxes him
 extremely for it, in his Observations upon
 that fourth Chapter, whose Arguments
 adduc'd against *Grotius* I shall answer a-
 mongst the other Objections.

Gronovius's

Gronovius's first Argument why it should be lawful to resist the Supream Magistrate in defence of Religion, is, because if it be not lawful for Subjects to Arm themselves for Religion against their Prince, it should not be lawful for their Prince by the same rule to defend himself against *Turks* and *Infidels*, who would endeavour to force him to comply with their Impieties. But to this it is answered, That Resistance to Superiors is expressly discharg'd by the Laws of God and Nature, as said is, but this cannot be extended to Cases where there is no Subjection nor Allegiance; and it may be as well argu'd, that because one private man may beat another who offers to strike him, that therefore a Child may beat his Parent, or a Servant his Master, or that because I may violently resist a private man who offers to take away my Goods unjustly, that therefore I may oppose the Sentence of the Magistrat, because I forsooth do not think the same just.

His second shift is, That our Saviour commanded only absolute submission without resistance in the Infancy of the Church when he himself was miraculously to assist his own Servants, but this Submission was to end with the Miracles, to which it related.

lated. Asto which, my answer is, 1. That all the Commands in Scripture may be so eluded, nor is there any Duty more frequently and fully inculcated than this is, and that too in the same Chapters amongst other Duties, which are to last for ever, such as submission to Parents, and Masters, and this is founded upon plain reason and conveniency, and not upon Miracles. 2. This was receiv'd and acknowledg'd by the *Pagans*, as has been fully prov'd, though it cannot be pretended that they rely'd upon any such miraculous assistance. 3. It cannot be deny'd but the Fathers of the Primitive Church did recommend and justify themselves in their Apologies to the Heathen Emperors for bearing patiently, when they were able not only to have resisted, but to have overthrown their Persecuters, as is clear by the Citations out of *Tertullian*, *Cyprian*, *Lactantius*, *Augustine*, and others, to be seen in *Grotius*, *De Jure Belli*, lib. 1. cap. 4. num. 7. And it had been great impudence as well as sin in them, to have boasted of a recent matter of Fact, which was not true; nor could there be a greater injury done to the Primitive Christians, as *Grotius* observes, than to ascribe that to their Weakness, which they consider'd as an effect

fest of Duty ; and why should the Heathen
 Emperors have suffered those to multiply,
 who obey'd only because Disobedience was
 not safe, for they might have certainly
 concluded, that by the same Principle that
 they obeyed only because they were weak,
 they would disobey how soon they were
 able. 4. If the first Christians in general
 had obeyed only because they were not
 able to resist, then any private Christian
 had resisted when he was able, or would
 have fled or conceal'd himself, whereas it
 it acknowledg'd in the other Answer press'd
 by *Gronovius* himself, that they sought for
 Martyrdom, and so these two Answers are
 inconsistent; and the *Thebean Legion*, and o-
 thers, did submit themselves voluntarily to
 Martyrdom with their Arms in their hands,
 and when they were able to have over-
 thrown the Emperor. And lastly, If this
 Doctrine were allow'd, no Society could
 subsist, for when Dissenters grew strong,
 the lawful Magistrat behov'd to perish ;
 whereas Jesus Christ did contrive the Chri-
 stian Religion ; so as that all Governours
 should reasonably wish their Subjects to be
 Christians; and so as no Christian should at-
 tempt to overthrow the order and establish-
 ment of Civil Government, and that they

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should not be drawn away from the practice of Christian Devotion by the carnal desires of being great and strong in the World, nor have any hopes in the Arm of Flesh to the lessening of their immediate dependence upon him.

His third shift is, That his Doctrine of Submission and of dying for the Christian Religion without making Resistance, was only the Practice, but not the Command of the Primitive Church, and proceeded from their immoderat affectation of the Crown of Martyrdom, as *Milntown* also pretends. But since the express Command of Scripture is founded upon such clear Reason, and since (as *Grotius* well observes) the Practice of the Primitive Christians, who liv'd so near the Age wherein these Scriptures were pen'd, is the best Interpreter of the Scripture, it is horrid Impiety to make those blessed Martyrs pass for vain Hypocrites, and distracted Self-murderers; and it becomes us with holy reverence to imitate those whom the Christian Church has ever admir'd.

The fourth shift is, That the Protestant Churches have been reform'd by such Insurrections as these, contrary to the Royal Authority. But this is fully answered by the

the learned *Henry More* in his *Divine Dialogues*, and by *Du Moulin* in his *Philanax Anglicus* ; where likewise are to be found the many Testimonies of Protestant Churches, and Protestant Divines, condemning positively the taking up of Arms against the Sovereign Power, even for the defence of Religion ; and the very *Presbyterian Confession of Faith at Westminster*, is so positive as to this point, that the *Presbyterians* themselves can never answer it. The sum of which answer is, That the King of *Spain* coming by Marriage in place of the Duke of *Burgundy*, the said King of *Spain* could pretend to no more power than they had, nor could the House of *Burgundy* pretend to any more power by marrying the Heirs of the Counts of the several Provinces, than these Counts had over their Provinces ; and therefore since none of these were Sovereigns over their Provinces, the Provinces might have resisted the King of *Spain* when he oppress'd them ; and consequently that Resistance cannot defend such as resist Supream Powers upon pretence of Religion, *Grotius de Antiq. Reipub. Batav. cap. 7.*

The opposition made by the Protestants in *France*, was not occasion'd by Religion, but upon a Quarrel betwixt the Princes of
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the Blood and the House of *Guise* in the Minority of *Francis* the 2^d, and is defended most excellently by King *James* himself, not to have been Rebellion, in his *Defence of the Right of Kings*, pag. 14.

The Opposition made by the Princes of *Germany* to the Emperor, was founded upon the inherent Right in the Princes, by the golden Charter of the Empire. And *Luther* himself declar'd, that *Magistratus non erat resistendum*, and has written a Book to that purpose ; nor would he engage in the Confederacy for Defensive Arms at *Smalcald*, until the Lawyers declared that that Resistance was lawful by the Laws of the Empire, *Vide* *Slydan Hist. lib. 8. anno 1531.*

The War that arose in *Switzerland*, was not occasion'd by Religion ; for the Reformation was once establish'd with the consent of the Magistrat. And the Eruption that was made by other *Cantons* upon the Reform'd *Cantons* eleven years after that Establishment, *Vide* *Slydan, anno 1522.* Nor was it *Calvin* who banish'd the Prince and Bishop of *Geneva*, for he fled eight Months before upon the detecting of a Conspiracy, by which that Bishop was to deliver over the Liberties of that City to the Duke of

of *Saxoy*, and for which his Secretary was hang'd, *Vide Turretin. Annal. Reformationis, anno 1529.* And albeit those who Reform'd in *Scotland*, in the Reign of Queen *Mary*, pretended Authority from the King, yet they were certainly Rebels, and are condemn'd by *Rivet*, a famous Protestant Divine, who also inveighs bitterly against this Principle, *Castiga Not. in Epist. ad Balsac. cap. 13. num. 14. sub finem.*

From all which, I observe, First, That all the Protestant Divines by making Apologies for such of their Profession as have risen in Arms against Supream Powers, must be thereby concluded to be asham'd of the Principle. 2. Immediately upon the quieting thole Rebellions, all the Protestant Churches have in their *Confessions of Faith*, declared their abhorrence of that Principle; which being the product of Conviction and Experience, joyn'd with Duty, must be the most judicious and sincere Testimony of all others. 3. All these Rebellions have been occasion'd by a mistake in point of Law, and not in point of Religion; for the Divines, as I have related, have been abused by the Lawyers: And therefore, since in the Isle of *Britain*, the Laws of both Kingdoms have declared
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the Rising in Arms against the King, to be Treason, albeit for the defence of Religion ; it necessarily follows, that this must be unlawful in point of Conscience in this Kingdom. 4. Though good things may be occasion'd by a Rebellion, yet that does not justify a Rebellion ; for though *Jero-boam* was allow'd by God to rise against *Rehoboam*, yet God Almighty himself calls his revolt Rebellion, *1 Kings 12. 19.* and *2 Chron. 10. 19.* and it is observable, that after this Revolt, there was but one good King amongst all the rebellious Kings of *Israel*, whereas amongst the Kings of *Judah*, who were lawful Kings, there was but one or two who were any ways impious ; so far does God bless a lawful Succession.

Some also use as a shift against this Orthodox Doctrine, that the reason why the Primitive Christians did not oppose their Emperors in the defence of the Christian Religion, was, because they had not been secured at that time in the Exercise of their Religion by the Laws of the Empire ; and therefore the practice of those Christians can be no Argument why we may not now rise to defend the Orthodox Religion, since it is now established by Law. But this Objection is fully answered by that great great

great Antiquary *Samuel Petit. Diatriba de Fur. Principum edictis Ecclesie quaesito*, where he clearly proves, that they were actually secured by the Edicts of the Emperors in the days of the Emperor *Tiberius*, and downward, and yet they would not rise in Arms though they were persecuted under these same Emperors, because the Word of God and the Christian Religion did command Obedience under Persecution, and discharged Resistance and taking up of Arms.

Add to Page 73.

I have also seen in *Fordon's History, lib. 14. pag. 73.* a Charter granted by King *David* to the Bishops, with the consent of *Robert* his Nephew, and his Sons giving power to the Bishops to dispoise in Testament upon their own Moveables, which before that time did by a corrupt custom fall to the King, in which Charter, the Witnesses are, *Robertus Senescallus Comes de Strathern, Nepos noster Ioannes Senescallus Comes de Carrick, filius suus primogenitus & haeres, Thomas Comes de Mar, Georgius de Dunbar, Comes de March, & Gulielmus Comes de Dowglass;* so that here is not only the attestation of the Father before he was King, naming *John* Earl of *Carrick*, thereafter King *Robert*

bert the 2d. his eldest Son and Heir, but the attestation of the Grand-Uncle King *David*, who could be no ways byassed in the Affair; and here he is ranked before the three eldest Earls in the Nation, who were then the three first Subjects therein; and it is against all Sense, to think that the whole Bishops would have sought the consent of the said *John* as Apparent Heir of the Crown, if he had not been Apparent Heir. I find also, that *Fordon* calls him when he is crown'd King, *Primogenitus Roberti secundi*; nor was there the least opposition made to his Coronation, nor to the Coronation of *Annabella Drummond* his Queen (a Daughter of the House of *Stob-hall*, now *Pearth*,) though both the Sons of the second Marriage were then alive. I find also, that *Boetius* himself acknowledges, that the Earl of *Marches* Son *George*, being pursu'd for having married clandestinely one of the Daughters of *Elizabeth Muir*, his defence was, that he married her when she was the Daughter of a private Subject, and before King *Robert* was King, whereas if she had been only a Bastard-Daughter, it could have been no Crime to have married her.

